

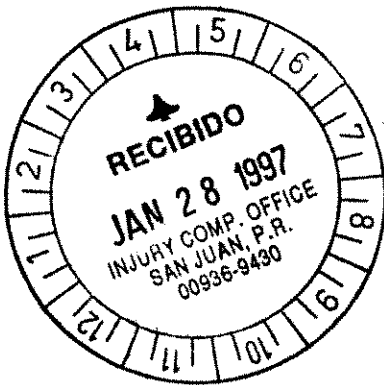
**INDEX OF EXHIBITS**

- 1) Angel David Morales Medical Evidence
- 2) Letter of Postmaster Odarit Tirado to OSHA Area Director José Carpena
- 3) Memorandum for John Malavé from USPS Manager Human Resources Neftalí Rivera
- 4) Letter of Radamés Sierra
- 5) Letter of OSHA Area Director José Carpena to Angel David Morales
- 6) Letter of OSHA Regional Administrator Patricia K. Clark to Angel David Morales
- 7) Award of arbitrator Roger E. Maher
- 8) Letter of OSHA Area Director José Carpena to Angel David Morales
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- 10) Sworn Statement of Samuel Cora
- 11) Sworn Statement of Alberto Otíz
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- 13) Sworn Statement of Raymond Ruiz
- 14) Sworn Statement of Howard Hall
- 15) List of clerk employees at Caparra Heights Station for 1996
- 16) US Postal Service Management Instruction
- 17) Report of OSHA Inspector Efigenio Rivera
- 18) Motion to Dismiss filed by US Postal Service attorney Fidel Sevillano del Rio on December 21, 1998 (docket 21 and 22).

- 19) Reports of Hazard and/or Unsafe condition or practice US Postal Service form 1767 filed by several employees at Caparra Station
- 20) An OSHA complaint filed by Angel David Morales filed on April 7, 1995
- 21) Letter to Angel David Morales from OSHA Area Director José Carpena dated June 9, 1995
- 22) Letter to OSHA Area Director José Carpena from Angel David Morales
- 23) Sworn Statement by Angel David Morales
- 24) Judgment from the US Court of Appeals for the First Circuit
- 25) Deposition of USPS supervisor Enrique López
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- 29) Letter from John Malavé to Angel D. Morales
- 30) Letter of warning from Enrique López to Angel D. Morales
- 31) Letter of warning from Enrique López to Angel D. Morales
- 32) Letter of suspension from Enrique López to Angel D. Morales
- 33) Employee Probationary Period Evaluation Report of Angel D. Morales
- 34) Letter of appreciation to Angel D. Morales from Manager José Sepúlveda and Supervisors Pedro Reyes and Jaime Rivera
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- 38) Assignment Order signed by Virginia Matías issued to Angel D. Morales
- 39) Letter from OWCP official Terry Friend
- 40) United States Postal Service seniority list for the metropolitan area.

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INSTITUTO DE MEDICINA FISICA  
Y ELECTRO-DIAGNOSTICO  
C/ 21 # 1785 LAS LOMAS  
RIO PIEDRAS, P.R. 00921  
787-783-8473

December 18, 1996.

Ref.: Angel D. Morales  
Record Number : 15103

To whom it may concern:

Mr. Angel D. Morales is a 36 y/o male without history of systemic illness who came to my office by the first time on August 29, 1996. The patient complained of Rt. elbow pain that started approximately 8 years ago. The pain is associated to his work duties at the Postal Office. He refers the pain never disappears but exacerbate with the motion of the wrist at work. He has been evaluated by several physicians & has received physical therapies for the condition. Also an electrodiagnostic study was done on May 1992 and was normal.

On his first visit he refers the RT. elbow pain in occasions radiates to rt. shoulder & neck. Occasionally he feels current sensation to forearm. On physical evaluation he present tenderness at RT. elbow laterally with no sensory deficit and normal strength. The tinnel test was positive at elbow but negative at wrist. A diagnosis of Rt. Lateral Epicondylitis was done & Suspected Rt. Ulnar Nerve Entrapment at elbow Vs. Posterior Interosseous Syndrome. Eight sessions of physical therapies were recommended in addition to anti inflammatory agents. The EMG/NCV study was done in Sept. 6, 1996 and revealed no nerve entrapment.

At reevaluation in Sept. 26, 1996 the patient referred feeling better after the therapies. On physical exam he still presented tenderness at Rt. elbow over the wrist extensor muscles, normal strength. Eight more sessions of physical therapies were recommended.

Exhibit-1 page 1

US DEPARTMENT OF LABOR

Office of Workers' Compensation Programs  
PO Box 566  
201 Varick Street - Room 750  
New York, New York 10014  
(212) 337-2075

October 20, 1993

Employee: Angel D. Morales  
Claim Number: A2-645411  
Occupational Disease Claim

Angel D. Morales  
Calle Brisaida 35 Urb Munoz Rivera  
Guaynabo, PR 00969

Dear Mr. Morales:

After further review, the Office of Workers' Compensation Programs has approved your claim for the condition "right arm sprain" aggravated by your Postal Service employment prior to April 2, 1992, based on the evaluation performed by Norberto J. Arbona, M. D.

Dr. Arbona found you able to perform work eight hours per day in duties not requiring "repetitive use of right arm, especially fingers." It is noted that you are working at present.

If any medical bills were returned to you for this condition, you may now resubmit them to this office for processing.

If you lost time from work due to this condition, submit form CA-7 through your employer's injury compensation office.

If you have any questions, do not hesitate to write to us.

Sincerely,

*David Parks*

David Parks  
Senior Claims Examiner

U S Postal Service  
Injury Compensation Office  
Box 3367 Main Post Office  
San Juan, PR 00936

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Page 2  
Mr. Angel Morales  
Record: 15103

After ending sixteen sessions of therapies. The patient is again re-evaluated on Oct. 31, 1996. The patient still referred Rt. elbow pain. He only received temporary relief with therapies. At physical exam he presented tenderness at Rt. wrist extensor muscle mass, the patient was referred to an Orthopedist for evaluation and to consider elbow infiltration or other procedure. The injury suffered by the extensor muscle mass and tendons at elbow is already chronic and is not responding to conservative treatment.

The lateral epicondylitis is on overuse injury. The repetitive motion of wrist especially at extension and supination causes a tendinitis of the extensor muscles of the wrist, entity called lateral epicondylitis. The continuous wrist hand motion that Mr. Morales has to do on his work in addition to the use of a computer keyboard and a machine in which he used to apply force are causing cumulative microtraumas to the extensor muscle mass & tendons.

The activities that involves repetitive wrist and digits extension, supination or forearm should be avoided. A position in which can alternate the use of the upper extremities is recommended.

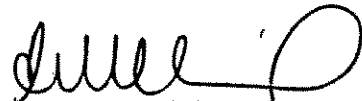
  
Enid Melendez, M.D.  
Lic. # 9853

Exhibit - 1 page 4

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**ASSESSMENT:**

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1. NORMAL CONDUCTION VELOCITY, LATENCY AND AMPLITUDE OF RT. MEDIAN EVOKED RESPONSE MOTOR AND SENSORY.
2. NORMAL CONDUCTION VELOCITY, LATENCY AND AMPLITUDE OF RT. ULNAR EVOKED RESPONSE MOTOR AND SENSORY, INCLUDING ACROSS THE ELBOW.
3. NORMAL INSERTIONAL ACTIVITY, NO SPONTANEOUS ACTIVITY, NO POLYPHASICS, FULL RECRUITMENT PATTERN ON MUSCLES TESTED OF RUE.

NOTE: IT WAS OBSERVED A 21% DROP IN AMPLITUDE WHEN COMPARING ABOVE THE ELBOW TO BELOW THE ELBOW AMPLITUDE OF ULNAR NERVE POTENTIAL. UP TO 25% DROP IN AMPLITUDE IS NORMAL.

---

**Diagnostic Impression:**

1. ESSENTIALLY NORMAL EMG/NCV OF RUE (SEE REPORT).

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**Recommendations:**

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*M. Amadeo, MD*

THANKS,

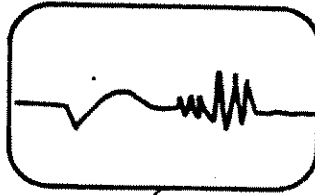
Rita L. Amadeo, M.D.

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**INSTITUTO MEDICINA FISICA Y DIAGNOSTICO**

*Rita L. Amadeo, M.D.*  
Diplomate American Board of P.M.R.

Hospital Metropolitano, 2do. Piso  
1785 Carr. 21, Las Lomas, P.V., P. 00921  
Tels. 793-6200 Ext. 349 - 783-8473



**ELECTROMYOGRAPHIC and NCV Examination**

Name ANGEL D. MORALES Sex M Age 36 Date 9/6/96

Address \_\_\_\_\_

Requested Procedures EMG/NCV

Clinical Diagnosis R/O NERVE ENTRAPMENT Referred by DRA. MELENDEZ

**History and Clinical Findings:**

HX: 36 Y/O MALE PT. W/O HISTORY SYSTEMIC ILLNESS. NO HISTORY OF ALLERGIES. THE PATIENT DEVELOPED RT ELBOW PAIN APPROXIMATELY 8 YEARS AGO SECONDARY TO HIS WORKING ACTIVITIES. MULTIPLE TX AND STUDIES WERE DONE FOR THE CONDITION IN THOSE YEARS.

HE REFERS THE PAIN DIDN'T DISAPPEARS DURING THESE BUT INTENSIFIES WITH RIGHT HAND MOTION AT WORK.

REFERS OCCASIONAL RADIATION TO RT. SHOULDER-NECK AND OCCASIONAL SENSATION TO FOREARM.

INSP: MOD ATROPHY OF RT UE.

PALP: TENDERNESS AT RT ELBOW LATERALLY.

SENS: NO DEFICIT.

MS: WRIST FLEX AND EXT, HANDGRIP.

DORSAL INTEROSSEOUS - N.

DTR'S: +2.

RT TINEL AT ELBOW (+) TINEL AT WRIST (-)

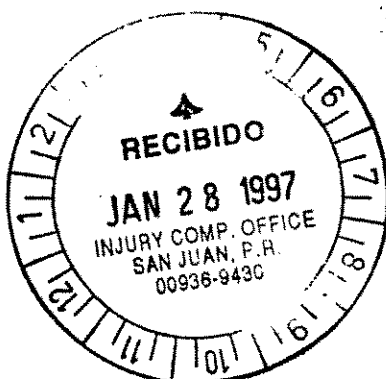




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centro  
neuroológico  
metropolitano

NEUROLOGIA Y ELECTROENCEFALOGRAFIA

CARRETERA 21 U3-1 LAS LOMAS, P.R. 00921 - TEL. 783-8081

10/29/96

Re: *Angel O. Morales*

*Mr. Morales was evaluated on this date with complaints of recurrent pain in right elbow and forearm. Has been treated with physical therapy.*

*On exam there is tenderness of the extensor and flexor muscles at the <sup>elbow</sup> ~~wrist~~ and forearm level.*

*The diagnostic impression is a strain of the forearm muscles. I agree with treatment and he should avoid repetitive use of the right arm, specially fingers.*

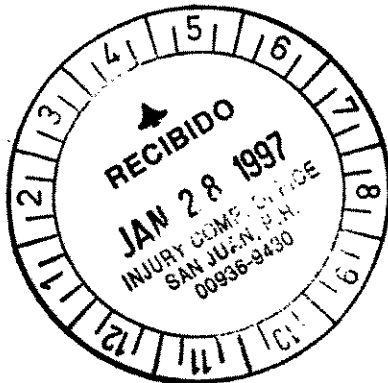
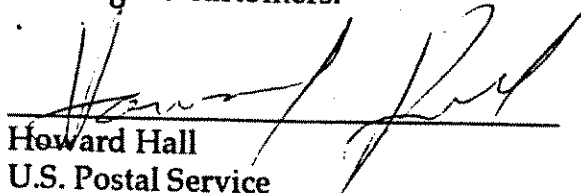

*Norberto J. Arbona, M.D.*

Exhibit -1, Page 7

To whom it may concern:

I Howard Hall want to declare the following:

That during the months of May, June, July and August 1996, co-worker Angel David Morales was changed by supervisor Enrique López from his duties as a Postage due clerk, Express Mail clerk and Business Reply Mail clerk which he has performed for years excellently to Window clerk duties where it is required to exert a great amount of repetitive motion like keying the IRT computer keyboard, filling a lot of postal forms for Express Mail, C.O.D mail, Registry mail, Insured mail, Certified mail, etc. Most of this forms are in quadruplicate and duplicate so you need to exert a force more than usual to fill them. In addition it is required to exert a lot of repetitive motion for the every day money count and money exchange to customers.



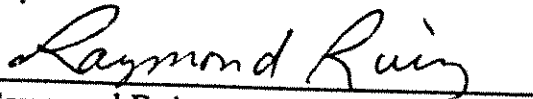
Howard Hall  
U.S. Postal Service  
Distribution and Window Clerk  
Caparra Heights Station  
San Juan Puerto Rico 00922  
Phone # 787-749-4319

Exhibit - 1, Page 8

To whom it may concern:

I Raymond Ruiz want to declare the following:

That during the months of May, June, July and August 1996, co-worker Angel David Morales was changed by supervisor Enrique López from his duties as a Postage due clerk, Express Mail clerk and Business Reply Mail clerk which he has performed for years excellently to Window clerk duties where it is required to exert a great amount of repetitive motion like keying the IRT computer keyboard, filling a lot of postal forms for Express Mail, C.O.D mail, Registry mail, Insured mail, Certified mail, etc. Most of this forms are in quadruplicate and duplicate so you need to exert a force more than usual to fill them. In addition it is required to exert a lot of repetitive motion for the every day money count and money exchange to customers.




Raymond Ruiz  
U.S. Postal Service  
Distribution and Window Clerk  
Caparra Heights Station  
San Juan Puerto Rico 00922  
Phone # 787-749-4319

Exhibit-1, Page 9

To whom it may concern:

I Julia Collado want to declare the following:

That during the months of May, June, July and August 1996, co-worker Angel David Morales was changed by supervisor Enrique López from his duties as a Postage due clerk, Express Mail clerk and Business Reply Mail clerk which he has performed for years excellently to Window clerk duties where it is required to exert a great amount of repetitive motion like keying the IRT computer keyboard, filling a lot of postal forms for Express Mail, C.O.D mail, Registry mail, Insured mail, Certified mail, etc. Most of this forms are in quadruplicate and duplicate so you need to exert a force more than usual to fill them. In addition it is required to exert a lot of repetitive motion for the every day money count and money exchange to customers.



Julia Collado  
U.S. Postal Service  
Former Distribution Clerk  
Caparra Heights Station  
San Juan Puerto Rico 00922  
Phone # 787- 767-2806

POSTMASTER

Exhibit - 2



June 21, 1995

Mr. José A. Carpena  
OSHA Area Director  
Occupational Safety and Health Adm., USDL  
US Federal Building and Courthouse  
150 Ave Carlos Chardón Room 559  
San Juan PR 00918-1718

062395  
(Satisfactory Response)

Dear Mr. Carpena:

Thank you for allowing us the opportunity of investigating the alleged hazardous conditions existing at the Caparra Heights Post Office. As you mentioned in your letter of June 9, 1995 the specific nature of the report involves a housekeeping issue concerning accumulation of dust, rodents, roaches and polluted air.

Ms. Elizabeth Rivera, Collateral Duty Safety officer, was sent to conduct an inspection of the facility on June 8, 1995 and to follow up on June 13, 1995, after receiving your letter.

In regard to the specific complaints, she determined that:

1. The condition concerning the accumulation of dust did exist. Management was instructed to correct the situation with their local custodial employee. The Maintenance Department at our main office was contacted and they will provide assistance. At the time of our second follow-up (June 13, 1995) the situation was under control.
2. Rodents and roaches - A pest control contract will be renewed and implemented permanently.
3. Polluted Air - At the present time we understand that there are no reasonable grounds to believe that such a hazard exist to the extreme of jeopardizing our employees health.

Should you have any further questions, please do not hesitate to contact me or Mr. Cándido López of our Safety Staff at 767-2300.

Cordially,

Odant V. Tirado  
Postmaster San Juan

voi:ot.osha

cc: Mr. John Malavé, Caribbean District Manager  
Mr. Michael Smith, Plant Manager  
Mr. John Rios, Manager Maintenance Dept.  
Mr. Neftalí Rivera, Manager Human Resources

585 AVE FD ROOSEVELT STE 221  
SAN JUAN PR 00936-9998  
809 767-3093  
FAX 809-767-3279

Sierra

Exhibit - 3, Page 1



July 20, 1995

**MEMORANDUM FOR John Malave**  
**District Manager Customer Services & Sales**

**SUBJECT: SAFETY INSPECTION FOR THE FOLLOWING**  
**STATIONS/BRANCHES AND POST OFFICES**

During the month of June, 1995, Ms. Elizabeth Rivera, Collateral Duty Safety Officer conducted an inspection and program evaluation of the following stations/branches and post office:

Rio Piedras Station  
Bayamon Branch  
Hato Rey Station  
Fernandez Juncos Station  
Trujillo Alto Station

Bayamon Gardens  
Old San Juan Station  
Caparra Heights Station  
Vega Baja Post office

As a result of her inspection various safety & health deficiencies were detected which require immediate attention by the local administration and our Maintenance Department as well.

During the inspection Ms. Rivera was accompanied by the Managers or Supervisors representing management and bargaining employees representing the employees. Both were very receptive and cooperative.



Nertali Rivera  
Manager Human Resources

cc: Mr. Odarit Tirado - Postmaster San Juan  
Mr. John Rios - Manager Maintenance  
Mr. J. Antonmattei - Manager Adm. Svs.  
Joint Labor Management S & H Committee  
Safety Advisory Team  
President - APWU, NALC & Mail Handlers Unions  
File - Chrono

Exhibit-3, Page 2



July 20, 1995

**MEMORANDUM TO: Mr. J. Sepulveda**  
**Manager Caparra Heights Station**

**SUBJECT: SAFETY INSPECTION**

Enclosed is the Safety Inspection and Program Evaluation report of your facility conducted by Ms. Elizabeth Rivera, Collateral Duty Safety Officer on June 8, 1995.

Please be aware that all necessary corrections of the safety hazards shall be made within 30 calendar days after completion of the inspection. You are responsible for generating the necessary PS Forms 4805 "WORK RECORD SHEET" or any PS Form 7381, "REQUISITION FOR SUPPLIES, SERVICES, OR EQUIPMENT" or the implementation of any administrative action for the abatement of these hazards.

If corrections can not be made within the time period established, you must provide me with an abatement plan that shall include but is not limited to the following:

1. All steps taken and the dates of such action to achieve compliance during the prescribed abatement period.
2. The specific additional abatement time estimated to achieve compliance.
3. The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
4. Interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

Exhibit 3, Page 3

- 2 -

Please inform of any action you have taken. Your response must be detailed, stating specifically what corrective actions have been taken.

If you have any questions or need any assistance please do not hesitate to contact your Safety Office at 767-2300 or 2305.

A handwritten signature in black ink, appearing to read "John Malave".

John Malave

Caribbean District Manager

Customer Services and Sales





# Safety and Health Deficiency Report

## Instructions

Record all deficiencies noted on forms 1784-A or B on this report. Include the standard or requirement violated and description of the deficiency. Indicate the classification (imminent danger, serious, non-serious) of each deficiency in the fourth column. Submit the original copy of this report to the head of the installation inspected within 10 days after completion of the closing conference. Abatement of recorded deficiencies will be conducted in accordance with section 825.7 of the

*Employee and Labor Relations Manual (ELM).* Upon receipt of this report, the installation head must ensure that it is posted in a conspicuous place, at or near the location of the deficiency, for three working days, or until the deficiency is satisfactorily abated, whichever is longer. Where it is not practicable to post the report near such places, it must be posted in a prominent place where it is readily observable by all affected employees for the same periods of time as specified above.

Installation Inspected <b>CAPARRA HEIGHTS STATION</b>	Check One <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Quarterly Fire <input type="checkbox"/> Semi-Annual	City, State, and ZIP + 4 <b>SAN JUAN PR 00920</b>	Inspection Date <b>06/08/95</b>
--	--	--	------------------------------------

Check One <input checked="" type="checkbox"/> District Inspection <input type="checkbox"/> Local/Plant Inspection <input type="checkbox"/> Other (Identify) _____	District/Local/Plant Manager's Signature, Title, and Date
--	---

### Abatement Committee (See ELM 825.7 for procedures)

Member's Name	Title	Office/Facility Represented
1. ELIZABETH RIVERA	COLLATERAL DUTY SAFETY OFFICER	SAFETY & HEALTH OFFICE
2. ENRIQUE LOPEZ	ACTING MANAGER	CAPARRA HEIGHTS STATION
3. ANGEL D. MORALES	CLERK	" " "
4.		
5.		
6.		
7.		

Corrective Action Recommended on Safety Deficiencies				4. Code (I, S, or N)	5. Abatement Date	6. Actual Completion Date	7. Office Responsible for Abatement
1. Item Number	2. Reference (OSHA, NFPA, etc.)	3. Description of Deficiencies and Recommended Corrective Action					
001	EL801 Chp' 4	No OSHA poster - one must be posted on the Safety Bulletin		N	30 Days		Station
002	EL801, 313, 613.11	Safety Talks not given on a weekly basis. These must be given and documented on a daily basis.		N	30 Days		Station
003		No current Safety Posters available.		N	30 Days		Station
004	EL801, 140	No PS Form 1767 available for employees. Space designated was empty.		N	30 Days		Station

## Corrective Action Recommended on Safety Deficiencies

1. Item Number	2. Reference (OSHA, NFPA, etc.)	3. Description of Deficiencies and Recommended Corrective Action	4. Code (I, S, or N)	5. Abatement Date	6. Actual Completion Date	7. Office Responsible for Abatement
005	OSHA 1910-1760	DUST ACCUMULATION AT: 1. On top of Carrier cases, files, A/C ducts, tables etc. A/C filters must be changed and work areas must be dusted. 2. Vinyl wall base in window area is loose must be re-glued. 3. Ceiling tile over COD section has traces of leakage, must be replaced.	N	30 Days		Station
006	OSHA 1910.176C EL801, 2	Platform is being used for storage, they are storing boxes and paper supplies, Area needs to be clean and organized.	N	30 Days		Station
007	MS-1, OSHA 1910 141 - MS-7	Men's room-door must be properly identified	N	30 Days		Station
008	EL801 Ap. 16, 19, 22, EL814 IB	ARTICLES ON TOP OF EQUIPMENT AT: 1. Box Section by Call Window 2. Carrier Case Rt. 42 3. Finance Area Shelves 4. Parcel Shelves  ALL ABOVE ITEMS MUST BE REMOVED.	N	30 Days		Station
009	NEC 240-3 NEC110-7 NEC 110-22	ELECTRICAL DEFICIENCIES: 1. Electrical outlet for CTT Scanner is overloaded. 2. Breaker outlet by electric time clock must be repaired. 3. Broken box by Parcel Section needs cover plate.	S	3 DAYS		Station
010	M-52, EL801, Ap. 26	No 4584's on record. This form must be used according to Local Policy.	N	30 Days		Station
011	OSHA 1910.38 EL801 ELM 850	Fire Prevention deficiencies: 1. Fire Evacuation Plans has misleading arrows pointing in opposite direction. 2. No documentation available on fire drills, or fire inspections.	N	30 Days		Station

## CARIBBEAN DIVISION

SAFETY & HEALTH PROGRAM EVALUATION QUESTIONNAIRE

POST OFFICE: Capana Station  
DATE AND TIME: 6/8/95 0900  
POSTMASTER/MANAGER/O.I.C.: Acting Mgr. Enrique Lopez  
EMPLOYEE COMPLEMENT: ~~None~~ Angel Darus Morales  
EVALUATED BY: Elizabeth Roca

1. IS THERE AN UPDATED LOCAL SAFETY & HEALTH POLICY PROMINENTLY POSTED ON THE BULLETIN BOARD? ☒ Y ☐ N
2. IS THE MOST RECENT OSHA POSTER PROMINENTLY POSTED? ☐ Y ☒ N
3. ARE PS FORMS 4584 (OBSERVATION OF DRIVING PRACTICES) AVAILABLE AND IN USE AS PER DIVISION POLICY? ☐ Y ☒ N
4. ARE PS FORMS 1767 READILY AVAILABLE ON THE WORKFLOOR? ☐ Y ☒ N
5. ARE WEEKLY SAFETY TALKS GIVEN AND DOCUMENTED? ☒ Y ☒ N
6. ARE SAFETY TALKS GIVEN ON ROTATING DAYS AND TIMES TO REACH ALL EMPLOYEES? ☐ Y ☒ N
7. ARE PS FORMS 1783 (ON THE JOB SAFETY ANALYSIS) AVAILABLE AND IN USE? ☒ Y ☐ N
  - a. ARE JSA'S USED AS TRAINING GUIDES FOR EMPLOYEES? ☒ Y ☐ N
  - b. ARE JSA'S PREPARED AFTER EACH ACCIDENT TO PREVENT REOCCURENCE? ☒ Y ☐ N
8. ARE PS FORMS 1784 A OR B AVAILABLE AND USED TO CONDUCT TIMELY LOCAL INSPECTIONS? ☐ Y ☒ N
9. ARE DAILY SAFETY INSPECTIONS OF WORKING AREAS CONDUCTED AND DOCUMENTED? ☐ Y ☒ N
10. ARE QUARTERLY FIRE INSPECTIONS CONDUCTED AND DEFICIENCIES RECORDED ON APPROPRIATE SECTION OF FORM 1784 A/B? ☐ Y ☒ N
11. IS LOCAL SMOKING POLICY IN ACCORDANCE WITH DIVISION POLICY, AND POSTED ON THE BULLETIN BOARD? ☒ Y ☐ N

PAGE 2

12. IS THERE A FIRE BRIGADE IN THIS OFFICE?
13. IS THERE AN EMERGENCY ACTION/FIRE PREVENTION PLAN?
- a. DATE LAST REVIEWED? \_\_\_\_\_
14. HAS A FIRE DRILL BEEN CONDUCTED THIS YEAR?
- a. IS THERE DOCUMENTATION AVAILABLE?
15. ARE EMERGENCY TELEPHONE NUMBERS POSTED ON/NEAR ALL TELEPHONES?
16. ARE DOG ALERT CARDS AVAILABLE?
- a. ARE THEY BEING PREPARED AND CASED WITH THE MAIL FOR DELIVERY?
17. IS DOG SPRAY STOCKED AND ISSUED AS NEEDED?
18. IS THERE A DESIGNATED SAFETY CAPTAIN?
19. IS HE/SHE SUBMITTING REPORTS TO THE SUPERVISOR AS REQUIRED?
20. IS THERE ANY EMPLOYEE TRAINED IN CPR OR FIRST AID?
21. ARE THERE ANY OF THE FOLLOWING REFERENCE MATERIAL AVAILABLE?
- A. EL 801 SUPERVISORS SAFETY HANDBOOK
- B. SUBCHAPTER 810 - ELM
- C. PUBLICATION 52 - ACCEPTANCE OF HAZARDOUS/PERISHABLE ARTICLES
- D. FLEET MANAGEMENT M-52
22. IS THE CARIBBEAN SAFETY RULES AND REGULATIONS BOOK ON THE BULLETIN BOARD?
23. ARE ALL ACCIDENTS INVESTIGATED BY THE IMMEDIATE SUPERVISOR ON DUTY AT THE TIME OF THE OCCURRENCE?
24. IS PS FORM 1769 COMPLETED BY THE IMMEDIATE SUPERVISOR ON THE DAY OF THE ACCIDENT AND SUBMITTED TO THE NEXT LEVEL OF MANAGEMENT FOR REVIEW AND SIGNATURE?
25. IS THERE AWARENESS OF MANAGING INJURIES PROCEDURES?
26. IS THERE AWARENESS OF ACCIDENT REPORTING PROCEDURES?
27. IS THERE AN ACCIDENT REPORT KIT WITH ALL OWCP FORMS AVAILABLE?

(Y)

(Y)

(X)

(Y)

Y

(Y)

(Y)

(Y)

(Y)

(Y)

Y

Y

Y

(Y)

(Y)

(Y)

Y

(Y)

(Y)

(Y)

(Y)

Y

28. IS THERE ANY LOCAL ACCIDENT PREVENTION PROGRAM OR STRATEGY IN EFFECT?

Y N

Y N / A N

(Y) N

COMMENTS:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Exhibit -4

2/22/96

I Radames Sierra employee at Caparra Heights believe that the posting of position # 2541417 was changed deliberately in reprisal towards Angel D morales. Prior to the posting I Asked Mr Juan Rodriguez Supervisor if he was planning to change this position in any way. Mr Rodriguez states no, that there was to be no change in this position. This position on several occasions was posted with the days off (Sat-Sun) but Mr morales showed great interest and management knew that he had this interest. When this position was posted for bid it showed a change in days off showing Sunday and Thursday.

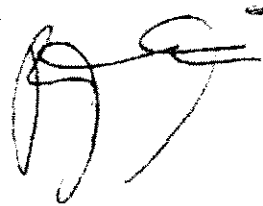




Exhibit - 5

## U.S. Department of Labor

Occupational Safety and Health Administration  
Federal Building, Room 559  
Carlos Chardon Avenue  
Hato Rey, Puerto Rico 00918



February 23, 1996

Mr. Angel David Morales  
Calle Brisaida #35, Urb. Munoz Rivera  
Guaynabo, PR 00657

Dear Moraes:

In response to your complaint of health and/or safety hazards at:

US Postal Service  
Caparra Height Station  
San Juan, PR 00922,

the Occupational Safety and Health Administration (OSHA) has notified US Postal Service requesting that the appropriate action be taken to correct the situation. Enclosed is a copy of that letter for your information.

We have not revealed your identity to the employer. When we receive additional information from the employer, a copy of the response will be forwarded to you.

Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity. If you believe you are being treated differently or action is being taken against you because of your safety or health activity, you may file a complaint with OSHA. You should file this complaint as soon as possible, since OSHA normally can accept only those complaints filed within 30 days of the alleged discriminatory action.

Your continued interest in workplace safety and health is appreciated.

Respectfully,



Jose A. Carpena  
Area Director

attachments

Exhibit - 6, Page 1

U.S. Department of Labor

Occupational Safety and Health Administration  
201 Varick Street  
New York, New York 10014



Reply to the Attention of:

April 1, 1996

Mr. Angel David Morales  
P.O. Box 10551  
San Juan, Puerto Rico 00922

Dear Mr. Morales:

This is to acknowledge receipt of your March 19, 1996 letter to Mr. Jose Carpena, Area Director, regarding your allegation of harassment and discrimination as an employee of the U.S. Postal Service. Your report has been forwarded to Mr. John E. Plummer, Director, Office of Federal Agency Programs, for his consideration and appropriate action.

Should you wish to contact Mr. Plummer, he can be reached at the following address:

John E. Plummer, Director  
Office of Federal Agency Programs  
U.S. Department of Labor/OSHA  
200 Constitution Avenue, N.W.  
Room N3112  
Washington, D.C. 20210  
(202) 219-9329

If we can be of any additional assistance, please feel free to contact Mr. Jose Carpena, Area Director, Puerto Rico Area Office, or if you wish, Mr. Philip Mannheim, FAPO, at (212) 337-2359.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia K. Clark".

Patricia K. Clark  
Regional Administrator

Attachments

cc: John E. Plummer, OFAP  
Puerto Rico Area Office



Exhibit -6, Page 2

**U.S. Department of Labor**

Occupational Safety and Health Administration  
201 Varick Street  
New York, New York 10014



Reply to the Attention of:

April 1, 1996

MEMORANDUM FOR: John E. Plummer, Director  
Office of Federal Agency Programs

THROUGH: John B. Miles, Jr., Director  
Directorate of Compliance Programs

FROM: Patricia K. Clark  
Regional Administrator

A handwritten signature in dark ink, appearing to read "Patricia K. Clark", written over the typed name and title.

SUBJECT: U.S. Postal Service Employee Allegation of Discrimination

As outlined in Chapter #13 of the FOM, this transmits all documents received and generated in regard to the above subject. In response to a U.S. Postal Service employee report of unhealthy working conditions, concerning exposures to dusts and unsanitary conditions at the Caparra Heights Station. This report was handled by telephone as a Non-Formal Complaint. The U.S. Postal Service responded and stated that the situation would be corrected by the middle of May, 1996. The Area Director plans to conduct an inspection at that time.

The report originator, Mr. Angel David Morales, has notified the Area Director of the San Juan Area Office, by letter dated March 19, 1996, that he is the subject of harassment and possible termination based on his contact with OSHA. As we receive additional information regarding this subject, it will be forwarded to your office.

If we can be of any further assistance in this matter, please contact Jose Carpena, Area Director at (809) 766-5457 or Phil Mannheim, FAPO at (212) 337-2359.

Attachments

cc: Mr. Angel D. Morales  
Puerto Rico Area Office

Exhibit - 7, Page 1

## NORTHEAST REGIONAL REGULAR ARBITRATION PANEL

## IN THE MATTER OF ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE  
Employer

and

NATIONAL ASSOCIATION OF LETTER CARRIERS  
UnionGRIEVANT:  
C. MONTANEZPOST OFFICE:  
SAN JUAN, PRCASE NO.:  
A94N-4A-C 96010961  
GTS 15288

BEFORE: ROGER E. MAHER, Arbitrator

## APPEARANCES:

For The USPS:

Juan Delgado.....Labor Relations Specialist  
Antonio Benavides Jr.....Customer System Analyst  
Antonio Whatts.....Supervisor Customer Services  
Enrique Lopez.....Supervisor Customer Services

For the NALC:

Jules Cohen.....Regional Administrative Assistant  
Modesto Figueroa.....President Branch 69  
Ralph Hernandez.....President Branch 826  
Obed Agosto.....Area Representative Eastern Region  
Carmen Suarez.....Letter Carrier  
Carmelo Montanez.....Grievant

Place of Hearing: 585 F.D. Roosevelt Avenue, San Juan, PR

Date of Hearing: May 31, 1996

## AWARD:

On the substantial and credible evidence of the case as a whole, the Arbitrator finds the USPS violated the National Agreement and M-39 Handbook when it caused Route 54 to become an auxiliary route.

As and for the remedy, within fourteen (14) days of receipt of said Award, the USPS shall return Route 54 to its configuration that existed prior to 7/18/95, and reassign Carmelo Montanez to same.

Date of Award: July 15, 1996

Arbitrator:



Exhibit 7, Page 2

Pursuant to the arbitration procedures set forth under the National Agreement between the United States Postal Service and the National Association of Letter Carriers, (hereinafter referred to as the "USPS" and the "NALC" respectively) the undersigned was appointed Arbitrator to hear and decide the issue herein and to render a final and binding award.

A hearing in this matter was held before the undersigned Arbitrator at the office of the Postal Service at 585 F.D. Roosevelt Avenue, San Juan, PR, on May 31, 1996.

The evidence adduced and the position and arguments set forth at the hearing have been fully considered in preparation and issuance of this opinion and its accompanying award. The parties were afforded ample opportunity to present evidence and testimony germane to their positions on the following disputed issue:

#### **Issues:**

##### **NALC Issue:**

"Did management violate the National Agreement and the M-39 Handbook when it abolished Route 54 worked by Carmelo Montanez and reduced it to an auxiliary route? And if so, what shall be the remedy?"

##### **USPS Issue:**

"Does management have the right, pursuant to Article 3 of the National Agreement, to abolish a full time route because of a route inspection? And if not, what shall the remedy be?"

#### **NALC POSITION**

This instant arbitration is the result of the NALC contending that the USPS violated Article 19 (Handbooks and Manuals) of the National Agreement, specifically the M-39 Handbook. The NALC asserts the management at the Caparra Heights Post Office, San Juan,

Exhibit-7, Page 3

Puerto Rico, arbitrarily and capriciously abolished Carmelo Montanez's, a letter carrier and shop steward (Grievant) Route, i.e., Route 54 to an auxiliary route.

The NALC submits that normally it would only have indirect evidence to suggest that management was arbitrary in its decision, however, in this matter there is also direct evidence.

The NALC states its indirect evidence is as follows. The Grievant was the only carrier at Caparra Heights Post Office to have his route inspected, and to have it inspected twice. There were routes at this Post Office with less than eight hours that were not abolished. Additionally even after a portion of the Grievant's route (Route 54) was removed to Route 37, the Grievant provides auxiliary assistance on Route 37 for the portion of his old route that was removed. Furthermore the fact is that the station manager, Jose Sepulveda, did not appear at this hearing to offer an affirmative defense or rebut the testimony of the NALC.

The NALC states while this indirect evidence may be sufficient to sustain this grievance it is also offering the direct and un rebutted testimony of Carmen Suarez, letter carrier, and the Grievant that Sepulveda told them both that he would abolish the Grievant's route because the Grievant had gone over his head and convinced Post Master Odarit Tirado, to grant the Grievant's request to have Saturdays off.

The NALC contends the credible testimony of both the Grievant and Suarez unequivocally establish that Sepulveda intentionally and deliberately in contravention of the National Agreement, used a route inspection in order to abolish the Grievant's route in retaliation. The stated reason for Sepulveda's retaliation was because on several occasions in 1994 and 1995, the Grievant had requested of him to have Saturdays off because his route was a commercial one wherein most of his customers were closed on Saturday and did not want mail delivered.

JUL-17-1996 10:18 FROM NBA'S OFFICE, NALC

TO

1 809 277 0381 P.03

Exhibit 7, Page 4

The Grievant's testimony established that Sepulveda made it clear that in no uncertain terms would anybody at this Post office get Saturdays off permanently. Despite this admonition by Sepulveda, Modesto Figuerosa, President Branch 69, and the Grievant made several requests to Post Master Tirado to allow the Grievant to have Saturdays off. Subsequently the Grievant, at Post Master Tirado's urging, had collected signed statements from a majority of his customers on his commercial route that acknowledged the Grievant was to hold their mail received on Saturday for a Monday delivery. As a result in early 1995, Tirado had granted the Grievant's request to have Saturdays off, and so informed Sepulveda.

The NALC asserts the testimony of both the Grievant and Suarez established that Sepulveda was determined to retaliate against the Grievant for going over his head and abolish the Grievant's route.

The NALC argues whether management's decision to intentionally abolish the Grievant's route was because of his position of shop steward or because he had the temerity to request Saturdays off which was granted by the Post Master, the un rebutted fact remains that the Grievant's route inspections were arbitrary and capricious and in violation of the National Agreement and M-39 Handbook.

The NALC adds that management at Caparra Heights, in further contravention of the National Agreement, declined to meet with it and the Grievant in his capacity as shop steward in connection with this grievance, or to answer Step Two or Three of the grievance procedure.

The facts and position of the NALC regarding this grievance are as follows.

1. Route 54 was inspected at the Caparra Heights Station on May 4th - 10th, 1995.
2. Route 54 showed on PS Form 1840 an average of 8.06

Exhibit 7, Page 5

3. This constitutes a full time duty assignment.
4. Management deducted Avenue Andalucia (approximately 2 hours 30 minutes, from Route 54 and transferred it to Route 37, thus creating Route 53 as an auxiliary route.
5. Management's deductions were excessive in that time was deducted for the Grievant making drops, deliveries and relays, yet the actual time necessary to deliver that section of Route 54 was not properly added.
6. Management's figures and deductions were deliberate and intentional in purpose to abolish Route 54.

The NALC states that Route 54 showed 8:06 on Inspection, therefore it is a full time duty assignment. The NALC does not dispute the fact that management has the prerogative to adjust routes, but argues what has occurred in this instant matter, was a unilateral reassignment of a regular senior carrier which is a unequivocal violation of the National Agreement. The NALC states that M-39 specifies that routes are to be as near 8 hours as possible (Section 242.122).

The NALC points out that the Hempstead National Arbitration Award dealt with the issue of the USPS taking 8 hour assignments and creating auxiliary assignments, and ruled in favor of the NALC; Case # H7N-1T-C39547. Furthermore the M-39 only calls for reducing a regular route to an auxiliary status if the evaluated time is less than eight hours. The NALC also argues had the USPS been within its right in this instant matter, it would have nonetheless been found to have violated Article 41. 3.0 and 41. 3.5.

As remedy in this matter, the NALC seeks that Route 54 be returned to the Grievant in its original configuration, and that the Grievant be awarded \$50.00 for every day since 7/18/95, the date his route was abolished; and he otherwise be made whole.



Exhibit 7, Page 6

### POSITION OF THE USPS

The USPS argues it did not violate the National Agreement and or the M-39 Handbook, when in May 1995, two route inspections by separate inspectors that were performed on Route 54 (the Grievant's route) determined that 2.0 - 2.5 hours of time were to be deducted from the route because of the Grievant's unproductive actions on the route and a determination was made to transfer that portion of Route 54 to Route 37, resulting in Route 54 becoming an auxiliary route.

The USPS argues it has the contract right and prerogative, pursuant to Article 3 of the National Agreement, to determine when or if a route needs to be inspected and to be guided by the route inspector's findings and adjust the route accordingly if it is overburdened and or to abolish a full time route causing it to be an auxiliary route, if it is determined that the route is less than six hours.

Article 3 (Management's Rights) in relevant part states,  
"The Employer shall have the exclusive right subject to the provisions of this Agreement and consistent with applicable laws and regulations; a) to direct employees of the Employer in the performance of official duties; b) to hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary actions against such employees; c) to maintain the efficiency of the operations entrusted to it; d) to determine the methods, means and personnel by which such operations are to be conducted."

The USPS submits that contrary to the NALC's position there was no hidden agenda by the station manager to abolish the Grievant's route because the Post Master has granted the Grievant's request to be off on Saturdays. Rather the Grievant's route was inspected on two

Exhibit 7, Page 7

different occasions by two different inspectors who did not work for the station manager. The USPS asserts a review of these inspector's documentation credibly establish that the Grievant's route was significantly less than eight hours. As a result a determination was made to make the Grievant's route an auxiliary one.

Further evidence that the station manager did not have a hidden agenda because the Grievant was off on Saturdays, is the fact the Grievant is still enjoying Saturdays off, still works as a full time carrier on his route while giving assistance to Route 37. The USPS states the net result is that the Grievant has not suffered any diminution of wages or benefits.

Accordingly the USPS respectfully requests that the Arbitrator deny this grievance in its entirety and further find that management, pursuant to Article 3, has the right to abolish a full time route when a route inspection finds it appropriate to do so.

### OPINION

Upon a review of the parties' arguments, evidence, and testimony adduced at the hearing, the Arbitrator finds that local management at the Caparra Heights Post Office violated the National Agreement and M-39 Handbook when it abolished the Grievant's full time route to an auxiliary one and transferred a portion of same to Route 37. The Arbitrator adds that subsequent to the aforesaid transfer of part of his original route, the Grievant has and continues to deliver that portion that was removed from his route.

This Arbitrator's finding does not preclude management from inspecting routes and after a fair and independent review determines that a route adjustment is warranted which results in a transfer of work from a particular route to another from doing so; as that right is clearly within



Management's Rights as set forth in Article 3 subject to the provisions of the National Agreement.

However, the NALC's direct testimony and indirect evidence clearly establish that the inspection of the Grievant's route was tainted by the station manager's animus towards the Grievant. This evidence strongly suggests that the station manager intended and deliberately sought to abolish the Grievant's route by using a route inspection as retaliation because the Grievant sought and was granted Saturdays off by Post Master Tirado over his objections. Clearly station manager, Sepulveda, did not order the route inspections because he was interested in maintaining the efficiency of the operation.

The station manager's statements, as testified by the Grievant and Carmen Suarez, was that he, the station manager, took offense to the Grievant's going over his head to the Post Master, who granted him Saturdays off even though the station manager had repeatedly denied the Grievant this consideration. The Arbitrator finds this was the sole grounds for abolishing the Grievant's full time route to that of auxiliary one.

Given the direct testimony of the Grievant and Suarez and the USPS's failure to call station manager's Sepulveda as a witness to refute this damaging testimony, the Arbitrator adopts the NALC's version that the Grievant was singled out for a route inspection. The indirect testimony establishes that as no one else at this post office was subject to a route inspection. Furthermore even though the Grievant's route was more than eight hours, other carrier routes with less than eight hours were not inspected. This speaks to no more or no less than the station manager's intent to punish the Grievant for going over his head.

JUL-17-1996 10:21 FROM NBA'S OFFICE, NALC

TO

1 809 277 0381 P.08

Exhibit 7, Page 9

The Arbitrator could expound further on the minutia of both route inspections and the inspectors failure to properly inspect the Grievant's route pursuant to the M-39 Handbook regulations. However he believes it is unnecessary upon his finding that the USPS's grounds for a route inspection in this instant matter was arbitrary and capricious because the credible testimony established the station manager's personal animus towards the Grievant.

The mendacious position of the USPS on behalf of the station manger, who did not appear at the hearing, that the route inspections of the Grievant were done in good faith, pursuant to the M-39 Handbook and that it 's determination in this instance was a management's right guaranteed by the contract is simply incredulous and of no value, especially when it was established that management used its right as a retaliatory weapon to inflict hardship upon the Grievant because of his temerity to ask and be granted Saturdays off.

The convincing testimony and evidence established that the decision to inspect the Grievant's route was intended for retaliatory purposes. The Arbitrator holds the USPS can not use the guise of maintaining efficiency, its contract right, when it has been shown by convincing testimony and evidence that the decision to inspect the Grievant's route was purposely for retaliatory purposes.

It is the Arbitrator's understanding that the Grievant still enjoys Saturdays off. Even with the transfer of 2.0 - 2.5 hours of his route, the Grievant has not endured an economic hardship. Accordingly the Arbitrator returns the Grievant's route to its original configuration without imposing a cash penalty on the USPS as he believes such would be punitive. The Arbitrator believes he has righted the wrong to the Grievant by awarding the status quo ante.

**U.S. Department of Labor**

Occupational Safety and Health Administration  
BBV Plaza Building, Suite 5B  
1510 F.D. Roosevelt Avenue  
Guaynabo, Puerto Rico 00968



Exhibit-8, page 1

October 1, 1996

Mr. Angel David Morales  
Calle Brisaida #35, Urb. Munoz Rivera  
Guaynabo, PR 00969

Dear Mr. Morales:

In response to your report of alleged hazardous working conditions at

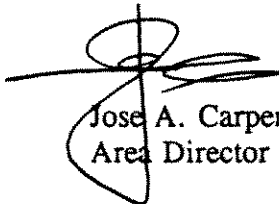
US Postal Service  
1505 F.D. Roosevelt  
San Juan, San Juan 00922

the Occupational Safety and Health Administration (OSHA) has conducted a workplace inspection. The inspection was completed on June 13, 1996.

We found some conditions that violated OSHA standards. Therefore, a notice was sent to your establishment official stating that hazards identified by OSHA must either be eliminated or addressed by an abatement plan to OSHA. The notice (enclosed) reflects the dates by which the hazards must be corrected. The contents of the notice must be posted near the hazardous conditions for three working days or until the hazard is abated, whichever is later.

Thank you for your concern about workplace safety and health.

Sincerely,



Jose A. Carpena  
Area Director

Enclosure

**U.S. Department of Labor**  
Occupational Safety and Health Administration  
BBV Plaza Building - Suite 5B  
1510 F.D. Roosevelt Avenue  
Guaynabo, PR 00968  
Phone: (787)277-1560 FAX: (787)277-1567



Exhibit - 8, Page 2

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## Notice of Unsafe or Unhealthful Working Conditions

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To:  
US Postal Service  
1505 F.D. Roosevelt  
San Juan, PR 00922

Inspection Number: 106896079  
Inspection Date(s): 06/13/96-06/13/96  
Issuance Date: 09/20/96

Inspection Site:  
Caparra Heights Station  
San Juan, PR 00922

*The violation(s) described in this Notice is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

---

This Notice of Unsafe or Unhealthful Working Conditions (Notice) describes violations of the Occupational Safety and Health Act of 1970, the Executive Order 12196, and 29 CFR 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters. You must abate the violations referred to in this Notice by the dates listed unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Notice you request an Informal Conference with the U.S. Department of Labor Area Office at the address shown above.

**Posting** - The law requires that a copy of this Notice be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Notice must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

**Notification of Corrective Action** - You should notify the U.S. Department of Labor Area Office promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Notice. Please inform the Area Office in writing of the abatement steps you have taken and of their dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc.

**Employer Discrimination Unlawful** - The law prohibits discrimination by any person against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint with the U.S. Department of Labor Area Office at the address shown above.

U.S. Department of Labor

Occupational Safety and Health Administration  
Washington, D.C. 20210

OCT - 8 1996

Reply to the Attention of:

Mr. Angel David Morales  
P.O. Box 10551  
San Juan, Puerto Rico 00922

Exhibit -9

Dear Mr. Morales:

The Occupational Safety And Health Administration (OSHA), Office of Federal Agency Programs, has received your report of alleged reprisal against you for your occupational safety and health activities.

The options available to Postal employees who believe they have been discriminated against for reporting unsafe or unhealthful working conditions are:

1. To have an investigation conducted by their agency.
2. To follow agency grievance and arbitration procedures which have been established to resolve disputes, differences, disagreements or complaints between parties concerning conditions of employment.

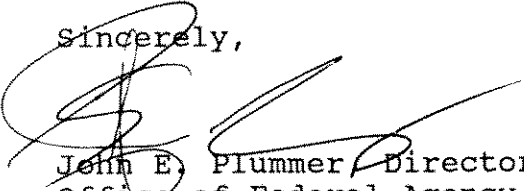
Pursuant to item number one (above) we have requested your agency to conduct an investigation and take appropriate action. You should be aware, however, that under Executive Order 12196 and 29 CFR Part 1960, which establish safety and health programs for Federal employees, OSHA's authority is limited. Specifically, OSHA does not have the authority to take remedial action on behalf of Federal employees who believe that they have suffered reprisal for reporting unsafe or unhealthful working conditions. That authority is vested with their employing agency.

We have forwarded your letter to this agency for handling, however you may also write directly to:

Ms. Gail Sonneberg  
Vice President  
Human Resources Department  
U.S. Postal Service  
Room 9012  
475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-4200

Telephone: 202-268-3784

Sincerely,



John E. Plummer, Director  
Office of Federal Agency Programs

## SWORN STATEMENT

I, Samuel Cora-Rivera, of legal age, married, property owner and resident of San Lorenzo, Puerto Rico, with Social Security number 581-08-7952, being duly sworn and state:

1. That my name and other circumstances are as above indicated.
2. That I have been employed by the United State Postal Service since May 1993 at Caparra Heights Station.
3. That I have performed the position of letter carrier and later on as acting supervisor at said station.
4. That I personally know and was a co-worker and later on supervisor of Mr. Angel David Morales at Caparra Heights Station.
5. That I personally know Mr. Enrique López who was a Manager at Caparra Heights Station and chief of all employees at said station including Angel David Morales. Also I know William Morales and Eliezer Báez who were my co-workers at Caparra Heights Station.
6. That I used to socially share with employees William Morales, Eliezer Báez and Manager Enrique López after finishing our tour of duties.
7. That in two of such reunions I heard Manager Enrique López, employees William Morales and Eliezer Báez when they admitted to have punctured the tires of Mr. Angel David Morales automobile. Also I heard when they admitted they poured sugar into the fuel tank of Mr. Angel David Morales' car.
8. That I know that Manager Enrique López used to withhold and inspect the private mail of Mr. Angel David Morales that was addressed to the P.O. Box that Mr. Angel David Morales had in Caparra Heights Station.
9. That Manager Enrique López wanted to know where Mr. Angel David Morales was living.
10. That Manager Enrique López used to constantly watch Mr. Angel David Morales. In one occasion I remember that López ordered to move Mr. Angel David Morales desk to an area where he and other supervisors could watch him constantly.
11. That Manager Enrique López persecuted, harassed and was very angry with Mr. Angel Morales. It was known by everybody at the Caparra Heights Station that Manager López was angry due to the complaints that Mr. Angel David Morales had

S.C.R.



filed with O. S. H. A. (Occupational Safety and Health Administration).

12. That Manager Enrique López suspended Mr. Angel David Morales because he was wearing a US Postal Service jacket which had the US Postal Service logo. Such suspension was unnecessary since there was no problem with Mr. Morales jacket. On several occasions I had to wear a jacket due to the cold temperature in the station. Many employees worn jackets of any kind or with any logo although they weren't from the Postal Service. Such employees did not receive any disciplinary action for wearing those jackets.
13. That I was present in a supervisors meeting where Manager Enrique López began to talk in a negative way about Mr. Angel David Morales. The purpose was to influence and to set at odds Mr. Luis Hernández against Morales. Later on, Mr. Luis Hernández was Manager of Caparra Heights Station for about two months.
14. That all of the above indicated is true under my best knowledge and understanding. In San Juan, Puerto Rico, this 19th day of June 2000.

S.C.R.

  
SAMUEL CORA-RIVERA

AFFIDAVIT NO. 345

Sworn and subscribed before me by **SAMUEL CORA-RIVERA**, of the above stated personal circumstances, who I identify by drivers licence number 1145197, this 19th day of June 2000, in San Juan, Puerto Rico.



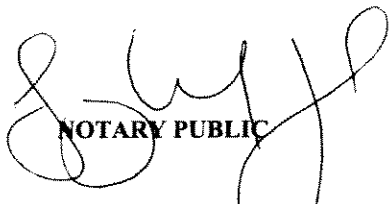
  
NOTARY PUBLIC

Exhibit - 11

**SWORN STATEMENT**

I, **Alberto Ortiz-Torres**, of legal age, single, property owner and resident of Coamo, Puerto Rico, with Social Security number 584-07-1946, being duly sworn and state:

1. That my name and other personal circumstances are as above indicated.
2. That I have been employed by the United States Postal Service since 1969.
3. That I personally know Mr. Angel David Morales.
4. That on or about March 1996 I represented Angel David Morales as a Union Shop Steward in a letter of warning given to him by Supervisor Enrique López. That on or about March 1996 I had a meeting with Supervisor Enrique López in order to settled or resolve the above mentioned letter of warning given to Angel David Morales. Supervisor Enrique López answer was that he was not going to withdraw the letter of warning because Morales has filed an EEO and OSHA complaints against him. Also Supervisor Enrique Lopez said that Morales was "fucking up" a lot with his EEO and OSHA complaints and that from now on supervisor Lopez was going to take care of Morales and watch him very closely.
5. That all of the above indicated is true under my best knowledge and understanding.

In San Juan, Puerto Rico, this 4<sup>th</sup> day of November 2005.

Affidavit #

561

  
**ALBERTO ORTIZ-TORRES**

Sworn and subscribed before me by **Alberto Ortiz-Torres**, of the above circumstances, who I identify by drivers license number 971097. In San Juan, Puerto Rico, this 4<sup>th</sup> day of November 2005.

  
**NOTARY PUBLIC**



## SWORN STATEMENT

I, **Carmelo Montañez**, of legal age, married, property owner and resident of Caguas, Puerto Rico, with Social Security number 584-07-6961, being duly sworn and state:

1. That my name and other personal circumstances are as above indicated.
2. That I have been employed by the United States Postal Service since 1988.
3. That I worked in Caparra Heights Station from 1991 to January 2002 as a letter carrier.
4. That I personally know and was co-worker of Mr. Angel David Morales at Caparra Heights Station.
5. That the undersigned is currently the President of the National Association of Letter Carriers Branch 869 Puerto Rico.
6. That Manager José Sepúlveda and Supervisor Enrique López discriminated and retaliated in any manner to employees that dare to complaints against them in the EEO office, union grievance or any other forum.
7. That the procedure to retaliate against an employee was to cover up his retaliatory and illegal practices behind a cloak of legality always alleging that any action taken against the target employee was made for the better efficiency of postal operation using this as a pretext.
8. That as an example of the above, on or about January of 1995, in order to improve the efficiency of the postal service, I asked manager Sepúlveda to change my days off from rotating to Saturday and Sunday since all the clients in my letter carrier route were stores, shops and business that were

closed on Saturdays. I was not able to deliver letters in my route on Saturday because all my clients were closed.

9. That Manager Sepúlveda refused to change my days off notwithstanding that the postal service were loosing money because I could not deliver any letter on Saturdays and the postal service was paying me for nothing to do.
10. That I decided to go to the District manager Odarit Tirado who was manager's Sepúlveda superior by that time. District manager Odarit Tirado accepted and found very logical my point of view and he decided to order manager Sepúlveda to change my days off to Saturday and Sunday.
11. That after manager Sepúlveda received the order from District Manager Odarit Tirado, he (Sepúlveda) became very angry and requested me to meet him in his office. Once I was in his office he threatened me saying "now that we are alone and have no witness I am not going to rest until I kick you out of here". After this, persecution against me was on a daily basis up to the point that Manager Sepúlveda decided to abolish my assigned position as a letter carrier.
12. That I decided to file a grievance in which a hearing was held on May 31, 1996, before arbitrator Roger E. Maher. Supervisor Enrique López served as a witness to the manager José Sepúlveda. In said hearing, the postal service used as a pretext that:

*"The employer shall have the exclusive right subject to the provisions of this Agreement and consistent with applicable laws and regulations; a) to direct employees of the Employer in the performance of official duties; b) to hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary actions*

*against such employees; c) to maintain the efficiency of the operations entrusted to it; d) to determine the methods, means and personnel by which such operations are to be conducted."*

13. However, arbitrator Roger E. Maher found that manager Sepúlveda abolished my position in retaliation for going over his head when he stay:

*"However, the NALC's direct testimony and indirect evidence clearly establish that the inspection of the Grievant's route was tainted by the station manager's animus towards the Grievant. This evidence strongly suggest that the station manager intended and deliberately sought to abolish the Grievant's route by using a route inspection as retaliation because the Grievant sought and was granted Saturdays off by Post Master Tirado over his objections. Clearly station manager, Sepúlveda, did not order the route inspections because he was interested in maintaining the efficiency of the operation.*

14. USPS Manager José Sepúlveda used to take as a pretext a legitimate mean for an illegitimate purpose. In the above mentioned case the opinion of the Arbitrator about José Sepúlveda's decision over the grievant to abolish Route 54 and reduce it to an auxiliary route in accordance to Article 3 of the National Agreement (Management's Rights) at page 9 is as follows:

*"The Arbitrator could expound further on the minutia of both route inspections and the inspector s failure to properly inspect the Grievant's route pursuant to the M-39 Handbook regulations. However he believes it is unnecessary upon his finding that the USPS's grounds for a route inspection in this instant matter was arbitrary and capricious because the credible testimony established the station manager's personal animus towards the Grievant.*

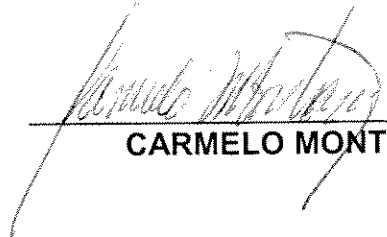
*The mendacious position of the USPS on behalf of the station manager, who did no appear at the hearing, that the route inspections of the Grievant were done in good faith, pursuant to the M-39 Handbook an that it's determination in this instance was a management right guaranteed by the contract is simply incredulous and of no value, especially when it was established that management used its right as a retaliatory weapon to inflict*

*hardship upon the Grievant because of his temerity to ask and be granted Saturdays off.*

*The convincing testimony and evidence established that the decision to inspect the Grievant's route was intended for retaliatory purposes. The Arbitrator holds the USPS can not use the guise of maintaining efficiency, its contract right, when it has been shown by convincing testimony and evidence that the decision to inspect the Grievant's route was purposely for retaliatory purposes."*

15. It is my understanding and personal experience that Manager José Sepúlveda and Enrique López used management's rights as a retaliatory weapon in a vengeful manner towards any employee whom he has a problem with EEO.
16. That all of the above indicated is true under my best knowledge and understanding.

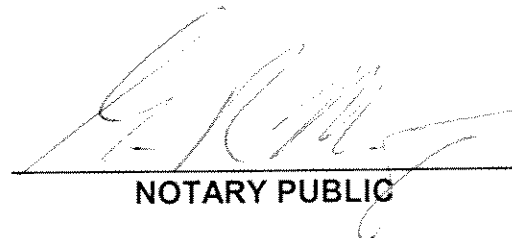
In San Juan, Puerto Rico, this 4<sup>th</sup> day of November 2005.

  
CARMELO MONTAÑEZ

Affidavit # 544

Sworn and subscribed before me by **Carmelo Montañez**, of the above circumstances, who I identify by drivers license number 1530331. In San Juan, Puerto Rico, this 4<sup>th</sup> day of November 2005.



  
NOTARY PUBLIC

## SWORN STATEMENT

I, **Raymond Ruiz Vega**, of legal age, married, property owner and resident of Toa Baja, Puerto Rico, with Social Security number 582-17-1169, being duly sworn and state:

1. That my name and other personal circumstances are as above indicated.
2. That I have been employed by the United States Postal Service since 1989 to present.
3. That I worked in Caparra Heights Station from 1995 to present.
4. That I personally know and was co-worker of Mr. Angel David Morales.
5. That I was witness and can testify of several discrimination and retaliation practices committed by Supervisor Enrique López against Angel David Morales due to Morales EEO and OSHA complaints, however I was never interviewed by the EEO office.
6. That it was well known by workers in Caparra Station the animosity of Supervisor Enrique López against Angel David Morales for Morales EEO's and OSHA complaints.
7. That on May 18, 1996 I was present when Supervisor Enrique López said in an angry manner that ***"because somebody have filed and EEO complaint against me, now everybody must use timecard and punch in each time an employee takes a break"***.
8. That on or about May 1996 Supervisor Enrique López remove Angel David Morales from his duties as Postage Due Clerk, Business Reply Mail Clerk and Express Mail Clerk alleging that from now on all employees were going to rotate their respective duties with all other clerks, however I noticed that

FRV

this was only a pretext to make harm (due to his right arm condition) and discriminate against Angel David Morales since López only rotate Morales' duties mostly to Mayra Irene. No other employee was removed from his regular duties, only Angel David Morales was removed. For instance, I was never removed or rotated to do other duties I was historically assigned to do.

Neither any other employee were removed or rotated.

9. Angel David Morales never left accumulate his work as a postage due clerk, business reply mail clerk and express mail clerk since Morales almost never was absent, in fact Morales was the clerk with best assistance record. When Morales were on vacation, there were other employees like Hector Ortiz, Mario Izquierdo or Porfirio Aviles that performed Morales duties without causing any delay. This was in that way for several years without causing any problems until Supervisor Enrique López began to discriminate and retaliate Morales. In fact the business reply, express mail and postage due work began to accumulate when Supervisor Enrique López removed Morales from his regular duties.
10. That I can also testify about the preferences by Supervisor Enrique López in favor of co-worker Mayra Irene at such point that this affected the postal operations and caused undue hardship to other male workers.
11. That Mayra Irene's tour of duty was from 8:00 a.m. to 5:00 p.m. and she almost always arrived late to Caparra Station.
12. That notwithstanding that Mayra Irene almost always arrived late, she had the guts and bare face of taking a breakfast in the swing room after she

KRV



punched in her time card. All of this were allowed and promoted by Supervisor Enrique López; however this behavior was not tolerated to any other employees specially males employees. Mayra Irene took her lunch break at about 11:00 a.m. or 11:30 a.m. this is three or three hours and a half after she begins her tour of duty at 8:00 a.m. Then she took more coffee breaks during the afternoon, always abusing of her coffee breaks and with the knowledge of Supervisor Enrique López. In fact most of the coffee breaks taken by Mayra Irene were taken in the Enrique López office while she had fun with Supervisor López.

- RRV
13. That even though almost all clerks were distribution and window clerk, the duties among the clerks in Caparra Station were assigned according to their tour of duties. For instance, clerks that begins their tour of duties at 5:30 a.m. (like Morales) were assigned to do distribution clerk duties since it was better for the Postal operations to do such duties early in the morning. Employees that begins their tour at 8:00 a.m. (like Mayra Irene) were assigned to window clerk duties because windows operations began at 8:00 a.m. This is why it was very impractical to change duties to any clerk that began his duties early in the morning like Morales.
14. That on August 24, 1996 Supervisor Enrique López reunited me and co-worker Angel David Morales in order to warn us that he was going to watch us very close but specially Morales. Supervisor Enrique López said that he was going to check our coffee breaks. Also he said to Morales in an angry manner ***"you think you are very smart because you filed an EEO***



Exhibit 13, Page 4

***complaint against me***” co-worker Morales told him several times that ***“please do not mention the EEO complaints in this meeting because that only shows that you make your decisions against me because the E.E.O. issue and that issue does not have anything to do with this”***. But supervisor Lopez continued speaking about the E.E.O. issue in my presence. However Supervisor Enrique López allowed co-worker Mayra Irene to abuse her coffee breaks.

15. That the secretary's day was never celebrated in Caparra Station because it was not an official holiday and we at Caparra did not have any secretary.
16. That all of the above indicated is true under my best knowledge and understanding.

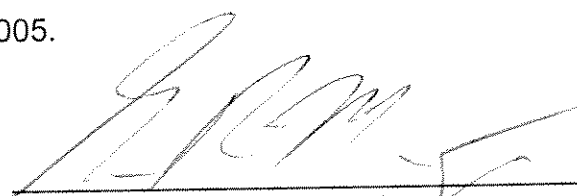
In San Juan, Puerto Rico, this 7<sup>th</sup> day of November 2005.

  
RAYMOND RUIZ VEGA

Affidavit # -547-

Sworn and subscribed before me by **Raymond Ruiz Vega**, of the above circumstances, who I identify by drivers license number 1272926. In San Juan, Puerto Rico, this 7<sup>th</sup> day of November 2005.



  
NOTARY PUBLIC

**SWORN STATEMENT**


Exhibit-14, Page 1

I, **Howard Hall Ramírez**, of legal age, married, property owner and resident of Carolina, Puerto Rico, with Social Security number 583-61-4163, being duly sworn and state:

1. That my name and other personal circumstances are as above indicated.
2. That I have been employed by the United States Postal Service since 1989 to present.
3. That I worked in Caparra Heights Station from 1993 to 1997.
4. That I personally know and was co-worker of Mr. Angel David Morales.
5. That I was witness and can testify of several discrimination and retaliation practices committed by Supervisor Enrique López against Angel David Morales due to Morales EEO and OSHA complaint, however I was never interviewed by the EEO office.
6. That it was well known by workers in Caparra Station the animosity of Supervisor Enrique López against Angel David Morales for Morales EEO's and OSHA complaints.
7. That by on or about May 1996 Supervisor Enrique López remove Angel David Morales from his duties as Postage Due Clerk, Business Reply Mail Clerk and Express Mail Clerk alleging that from now on all employees were going to rotate their respective duties with all other clerks however I noticed that this was only a pretext to make harm (due to his right arm condition) and discriminate against Angel David Morales since López only rotate Morales' duties mostly to Mayra Irene. No other employee was removed from his regular duties, only Angel David Morales was removed. For instance, I was never removed or rotated from my duties as a mark up clerk. Neither any other employee were removed or rotated.
8. That Angel David Morales never left accumulate his work as a postage due

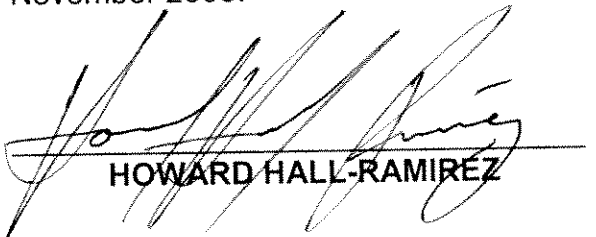
HR

clerk, business reply mail clerk and express mail clerk since Morales almost never was absent, in fact Morales was the clerk with best assistance record. When Morales were on vacation, there were other employees like Hector Ortiz, Mario Izquierdo or Porfirio Aviles that performed Morales duties without causing any delay. This was in that way for several years without causing any problems until Supervisor Enrique López began to discriminate and retaliate Morales. In fact, the business reply, express mail and postage due work began to accumulate when Supervisor Enrique López removed Morales from his regular duties.

- 
9. That I can also testify about the preferences by Supervisor Enrique López in favor of co-worker Mayra Irene at such point that this affected the postal operations and caused undue hardship to other male workers.
  10. That Mayra Irene's tour of duty was from 8:00 a.m. to 5:00 p.m. and she almost always arrived late to Caparra Station.
  11. That notwithstanding that Mayra Irene almost always arrived late, she had the guts and bare face of taking a breakfast in the swing room after she punched in her time card. All of this were allowed and promoted by Supervisor Enrique López, however this behavior was not tolerated to any other employees specially males employees. Mayra Irene capriciously took her lunch break at about 11:00 a.m. or 11:30 a.m. this is three or three hours and a half after she begins her tour of duty at 8:00 a.m. affecting in that way the lunch breaks of other employees like me which began their tour of duties at 5:30 a.m. or 6:00 a.m. Then she took more coffee breaks during the afternoon, always abusing of her coffee breaks and with the knowledge of Supervisor Enrique López. In fact, most of the coffee breaks taken by Mayra Irene were taken in the Enrique López office while she had fun with Supervisor López.

12. That even though almost all clerks were distribution and window clerk, the duties among the clerks in Caparra Station were assigned according to their tour of duties. For instance clerks that begins their tour of duties at 5:30 a.m. (like Morales) were assigned to do distribution clerk duties since it was better for the Postal operations to do such duties early in the morning. Employees that began their tour at 8:00 a.m. (like Mayra Irene) were assigned to window clerk duties because windows operations began at 8:00 a.m. This is why it was very impractical to change duties to any clerk that began his duties early in the morning like Morales.
13. That the secretary's day was never celebrated in Caparra Station because it was not an official holiday and we at Caparra did not have any secretary.
14. That all of the above indicated is true under my best knowledge and understanding.

In San Juan, Puerto Rico, this 7<sup>th</sup> day of November 2005.

  
HOWARD HALL-RAMIREZ

Affidavit # 562

Sworn and subscribed before me by **Howard Hall-Ramirez**, of the above circumstances, who I identify by drivers license number 1961735. In San Juan, Puerto Rico, this 7<sup>th</sup> day of November 2005.



  
NOTARY PUBLIC

Exhibit - 15

CAPARRA HEIGHTS STATION					CLERKS DAILY WORKSHEET						
DAY:		DATE:		A/P		P/P		WK			
LDC	NAME	H/W	OT	POT	45	43	44	48	A/L	S/L	SDO
48	ALVAREZ, A.										SAT/SUN
48	CALDERA, LA.										SUN/WED
48	COLLADO, J.										SAT/SUN
48	COLON, JU.										SAT/SUN
48	HALL, H.										SUN/THU
48	IRENE, M.										SUN/MON
48	IZQUIERDO, M.										SAT/SUN
48	LOPEZ, AM.										SUN/WED
48	MALDONADO, R.										SUN/MON
48	MORALES, AD.										SUN/MON
48	MURIEL, N.										SUN/FRI
48	NIEVES, M.										SUN/TUE
48	ORTIZ, H.										SAT/SUN
48	PADRO, JA.										SUN/TUE
48	PERIERA, AM.										SAT/SUN
48	RAMOS, L.										SUN/MON
48	RUIZ, R.										SUN/FRI
48	SIERRA, R.										SUN/TUE
48											
48											SUN/WED
48											
	MAILHANDLER										
48	FUENTES, O.										SUN/TUE
48	NEGRON, H.										SAT/SUN
	TOTAL HRS										
	CUSTODIAL										SAT/SUN
38	BIRRIEL, E.										
	REHABILITATION										SAT/SUN
69	PAGAN, I.										

Santos Jose > Special Delivery  
 Luis Pratts  
 T.I. GARCIA



Exhibit - 16

## Working Meals

### Definition

Working meals include lunch and dinner served for the purpose of continuing official Postal Service business meetings at the meeting site (on-site or off Postal Service premises) with Postal Service employees or with a mix of Postal Service employees and individuals representing outside organizations (not primarily contractors). *When practicable, schedule business meetings to preclude overlapping the normal lunch or dinner period.*

### Approval

Officers and PCES executives may authorize Postal Service funds to purchase and pay for working meals. All purchase requests (e.g., PS Form 7381, *Requisition for Supplies, Services, or Equipment*) must clearly state the business necessity for continuing the meeting through the meal period. The benefit to be derived by the Postal Service must be indicated.

### Exclusions

The following exclusions apply:

1. Purchase and payment of refreshments and working meals from Postal Service funds is not authorized for routine meetings such as weekly or biweekly staff meetings.
2. Purchase and payment of refreshments and working meals from Postal Service funds is not authorized for retirement parties, holiday gatherings, events for employees changing assignments, and gatherings celebrating personal events such as secretary's day, birthdays, weddings, anniversaries, and births. *These are not considered to be official Postal Service functions.*

### Exceptions

The following exceptions apply:

1. Officers and PCES managers may authorize Postal Service funds to purchase and pay for meals (breakfast, lunch, or dinner) for employee recognition and group appreciation meetings.
2. Officers may authorize Postal Service funds to purchase and pay for refreshments or meals (breakfast, lunch, or dinner) to recognize a postmaster appointment.
3. Officers may authorize Postal Service funds to purchase and pay for alcohol to be served in conjunction with officer-approved functions. The vice president, controller, Finance, may designate additional individuals to authorize these funds.

Page 7  
US Postal Service

Report from OSHA Inspector  
Efigenio Rivera

Fri Dec 13, 1996 11:14am  
Inspection Nr. 300653607

### CLOSING CONFERENCE NOTES:

Exhibit-17

Were any unusual circumstances encountered such as, but not limited to, abatement problems, expected contest and/or negative employer attitude? If yes, explain below.

☒ Yes ☐ No

At least on two occasions during the walkaround, Mr. [redacted] had questioned our motives to be there (he had already done so during the OC). During the closing conference (CC), I proceeded to, once again, explain the reason of our presence there and told both Mr. [redacted] and Mr. [redacted] that even though the agency had sent us photos of the conditions apparently corrected, at the time of this inspection only one item (citation 1, item 1) was in fact abated. Mr. [redacted] then proceeded to say that I was not paying attention to his argument, that we were (CSHO [redacted] and [redacted]) on a "witch hunt", that he felt that this alleged employee that had called us was setting him up, and that the conditions we were observing that day were as a result of strenuous circumstances. He said that the employee who was reporting or would report a false condition to us will be severely punished. [redacted] explained to him the rights of the employees to present to us what they consider to be a hazard, whether it is or not, and that no reprisal should be taken against any employee for exercising his right to complaint to us.

During the walkaround (W/A), Mr. [redacted] said that the reason for the inside storage room not being organized as the inside passageways be blocked was because a private contractor was repairing a broken glass window, inside the room. He also stated that the access to the storage room was blocked to prevent employees from entering the room as they were not authorized to do so. Moreover, he stated that he had the only key to that storage and that if an employee needed any particular form or supply stored in that room, he will get it for him/her, but that the employee will not enter the room. However, while interviewing an "ee", the "ee" stated he would enter daily, if needed, into the storage room to get forms for the employees and that he had a key to the storage room.

Also, during the W/A, Mr. [redacted] had indicated that employees wearing dust masks were going to be severely admonished/punished because they, by USPS rules, are not to be using masks unless so recommended by their physician. This comment came as a result of various employees wearing dust masks allegedly due to the dusty conditions of the workplace. However, an employee interviewed during the inspection stated that the dust mask was using had been provided by Mr. [redacted].

Concerning the outside storage area, he stated that due to the high volume of packages received due to the holiday season it was practically impossible to have the area better organized. However, while we (the CSHOs) had been interviewing some employees, the area had been organized. That action was considered a CDI (Corrected During Inspection).

As I was explaining to Mr. [redacted] and Mr. [redacted] the conditions we had observed and what was needed to correct them, Mr. [redacted] continued to interrupt me until such point at which CSHO [redacted] suggested I continued the discussion of the conditions observed (in other words, to ignore Mr. [redacted] allegations). Nevertheless, Mr. [redacted] continued to indicate that we were there because of the alleged call; at that point, I said to Mr. [redacted] that it was apparent that we should address what was left of the CC with Mr. [redacted]. CSHO [redacted] proceeded to state that he felt insulted because Mr. [redacted] had called him a liar and that there was not reason for him, a GS-12 Federal employee, to lie about the reasons why we were there. After discussing abatement and abatement periods with Mr. [redacted], the CC was concluded.

#### 19. Closing Conference Checklist ("x" as appropriate)

- ☐ No Violations Observed
- ☐ Gave Copy Employer Rights
- ☒ Reviewed Hazards & Standards
- ☒ Discuss Employer Rights/Obligations



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

Exhibit-18, Page-1

ANGEL DAVID MORALES-VALLELLANES, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil No.  
 :  
 UNITED STATES POSTAL SERVICE, MARVIN : 97-2459 (HL)  
 T. RUNYON, POSTMASTER GENERAL; UNITED :  
 STATES DEPARTMENT OF LABOR-OCCUPATIONAL :  
 SAFETY AND HEALTH ADMINISTRATION (OSHA), :  
 U.S. ATTORNEY GENERAL, AMERICAN POSTAL :  
 WORKERS UNION, PUERTO RICO AREA LOCAL :  
 (APWU-PRAL) AFL-CIO, DANIEL SOTO, :  
 PRESIDENT APWU-PRAL; ENRIQUE LOPEZ, :  
 :  
 Defendants. :  
 ----- :

**CODEFENDANT U.S. DEPARTMENT OF LABOR'S**  
**MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT**

To: Honorable Hector M. Laffitte, U.S.D.J.  
 U.S. District Court for the District of Puerto Rico  
 Federico Degetau Federal building  
 150 Carlos Chardón Avenue  
 Hato Rey, Puerto Rico 00918

COMES NOW, the codefendant U.S. Department of Labor-Occupational Safety and Health Administration, which moves pursuant to Rule 12(b)(1), 12(b)(6) and 56 of the Federal Rules of Civil Procedure for an Order dismissing codefendant U.S. Department of

Exhibit-18, Page-2

ANGEL DAVID MORALES-VALLELLANES vs.  
U.S. Postal Service, et al. - CV 97-2459 (HL)  
Page 14

certain evaluations and recommendations with respect to the programs of the various agencies. In addition, each Federal agency -- as well as OSHA -- is authorized to conduct inspections at the agency premises and ensure abatement of safety and health hazards. The provisions of Section 19 of the Act and the corresponding regulations are applicable to the USPS. See 29 CFR § 1960.2(b).

With respect to private sector employees, Section 11(c)(1) of the Act provides that "[n]o person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act...or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." 28 U.S.C. §660(c)(1). The Act does not contain a similar provision for federal employees. However, the Department of Labor has developed an internal policy to process discrimination/retaliation complaints from federal employees who are not otherwise subject to the provisions of Section 11(c) of the Act or the Civil Service Reform Act. The Department of Labor's internal policy provides as follows: "Reports of reprisal or discrimination from Federal employees who are not covered by the Special Counsel, should be sent to the Designated Agency Safety and Health Officer" (See OSHA Instruction FAP 1.3(5)(b) annexed hereto as Exhibit B).<sup>4</sup> The Department of Labor in issuing this internal

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<sup>4</sup>In order to seek protection from the discriminatory actions of their supervisors as a result of safety activities at the  
(continued...)

Exhibit-18, Page-3

ANGEL DAVID MORALES-VALLELLANES vs.  
U.S. Postal Service, et al. - CV 97-2459 (HL)

Page 15

directive has exercised its discretion consistent with the regulatory scheme to promote the policy of the United States

---

<sup>4</sup>(...continued)

workplace, postal employees may only resort to the internal protections provided by the USPS. Most employees of the federal government otherwise enjoy protection from prohibited personnel practices (e.g., discrimination/retaliation) which occur as a result of reporting violations of law or regulation pursuant to the Whistle blower Protection Act, 5 U.S.C. §§ 1221 et seq., which authorizes the employee to bring an independent action before the Merit Systems Protection Board. See 5 U.S.C. § 1221. Many federal employees are also able to file a complaint of reprisal or discrimination with the Office of Special Counsel which also has jurisdiction to "receive and investigate allegations of prohibited personnel practices". See 5 U.S.C. § 1212. Pursuant to 5 U.S.C. § 2302, however, the Civil Service Reform Act only provides protection against specified "personnel actions" with respect to an employee in, or applicant for, a covered position "in an agency". The Federal Circuit has held that the definition of "agency" in §2302(a)(2)(c) "does not include the United States Postal Service which is specifically excluded from the generally applicable definition of 'executive agency' in 5 U.S.C. §105 ... It is a unique entity. Where Congress intended the Postal Service to be included within the definition of agency or to be subject to particular provision of Title 5, it explicitly so provided." Booker v. Merit Systems Protection Board, 982 F.2d 517, 519 (Fed. Cir. 1992). Accordingly, employees of the USPS are not covered by the Whistle blower Protection Act and are outside the jurisdiction of the Office of Special Counsel.

On February 26, 1980 Executive Order 12196 was issued. This Executive order states: "[t]he head of each agency shall establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition or other participation in agency occupational safety and health program activities." Pursuant to this Executive Order regulations which effect all executive agencies, including USPS employees, were issued at 29 C.F.R. Part 1960. Pursuant to these regulations and the Executive Order, the Postal Service is required to establish procedures to safeguard its employees from reprisals taken as a result of the employee's exercise of any right afforded by section 19 of the Act. See Executive Order 12196 (February 26, 1980); 29 C.F.R. § 1960.46. Consequently, the procedures which the USPS has instituted pursuant to 29 C.F.R. § 1960.46 are the only protections available to its employees who believe they are being retaliated against as a result of safety activities at the workplace.

## REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE

## I. Employee's Action

Area (Specify Work Location)			Exhibit 19, Page 1		
Describe Hazard, Unsafe Condition or Practice. Recommend Corrective Action.					
See ATTACHED PAPER					
Employee	Signature	Date and Time			
	Angel Daniel Morales	3/20/95			

## II. Supervisor's Action

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice. (If Corrective Action Has Been Taken, Indicate the Date of Abatement.)			
Forward TO Maintenance Office			
Supervisor	Signature	Date	
	[Signature]	3/21/95	

III. Approving Official's Action  
(Check One and Complete)

The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement).			
A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change:			
There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:			
Approving Official	Signature	Date	Date Employee Notified

## IV. Maintenance Action (Complete If Necessary)

Maintenance Supervisor	Signature	Date	Date Hazard Abated

*Date: March 19, 1995*

*To: Supervisor Juan Rodríguez and / or Manager José Sepúlveda*

*From: Angel D. Morales, Distribution Clerk*

*Subject: Report of Hazard, Unsafe Condition or Practice*

*Due to lack of maintenance personnel, the cleaning process in a lot of places at Caparra Station have not been done for several years. In consequence, the accumulation of dust, fungus, mice and rats, cockroach eggs and excrements, in addition to others, have done a very polluted environment of imminent danger. The white air conditioner filters are changed frequently and in just 24 hours it takes the dust color, showing the very high density of particles in the air that sometimes seems like a fog or cloud. The air conditioner is recycling the same dusted air causing this fog phenomenon. The registry section have accumulated great quantities of dust in the roof. When somebody open, close or hit the door, the cage roof shake provoking a "rain" of dust that falls over the people working at the area. This situation is causing me and other employees symptoms like sore throat; eyes, roof of the mouth and throat itching; eye irritation and respiratory problems. These health problems are being presented by most of the employees in this station.*

*As a corrective action I am requesting:*

- 1. Dust measure test in order to know the range of contamination in this "sick building". Although I know that the minimum concentration of dust, even when it is within the OSHA parameters, can cause allergies and illness to sensitive people.*
- 2. A more accurate or effective housekeeping program.*
- 3. At least two more maintenance persons because this station is too big and there are a lot of things to clean for the maintenance employee we already have.*

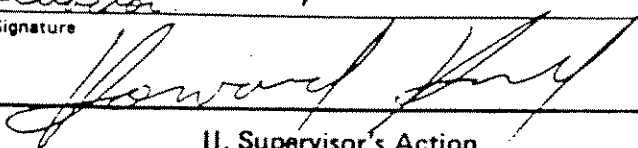
4. A ventilation and extraction air conditioner system in order to avoid to breath the same polluted air that comes from cars that pass thru Roosevelt Avenue causing the dispersing of dust, smoke and fungi particles.

Waiting for your reply  
Angel Daniel Morales  
Angel D. Morales  
Distribution Clerk  
U.S Postal Service  
Caparra Heights Station 00922




I. Employee's Action

Exhibit-19, Page 4

Area (Specify Work Location) SPR area and work floor		
Describe Hazard, Unsafe Condition or Practice, Recommend Corrective Action. I would like to inform that the Capone Station in health is poor, because the air is always full of dust particle we can smelled. In one year and half that I have work at Capone took more days off by sick leave that all the 5 year working for the Post Service. The major reason was throat irritation and was caused by the dust and the poor maintenance of the air in station.		
Employee	Signature 	Date and Tour 3/6/95 II

II. Supervisor's Action

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice (If Corrective Action Has Been Taken, Indicate the Date of Abatement.)  Forward TO Maintenance office		
Supervisor	Signature 	Date 3/21/95

III. Approving Official's Action  
 (Check One and Complete)

<input type="checkbox"/> The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement)			
<input type="checkbox"/> A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change:			
<input type="checkbox"/> There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:			
Approving Official	Signature	Date	Date Employee Notified

IV. Maintenance Action (Complete If Necessary)

Maintenance Supervisor	Signature	Date	Date Hazard Abated
------------------------	-----------	------	--------------------



## REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE

## I. Employee's Action

Exhibit-19, Page 5

Area (Specify Work Location)		
Describe Hazard, Unsafe Condition or Practice, Recommend Corrective Action. Debido a la falta de <sup>nos</sup> personal de limpieza, el area de trabajo se ha ido acumulando mucho polvo, Lo que me esta ocasionando: alergias, problemas respirato- rios, etc. Además debido a que no se fuma con regularidad, se ven ratones y cucarachas alrededor.		
Employee	Signature <i>A. Rivera</i>	Date and Hour 3/2/95

## II. Supervisor's Action

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice. (If Corrective Action Has Been Taken, Indicate the Date of Abatement.)		
Forward TO Maintenance office		
Supervisor	Signature <i>[Signature]</i>	Date 3/21/95

III. Approving Official's Action  
(Check One and Complete)

<input type="checkbox"/> The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement)			
<input type="checkbox"/> A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change:			
<input type="checkbox"/> There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:			
Approving Official	Signature	Date	Date Employee Notified


## IV. Maintenance Action (Complete If Necessary)

Maintenance Supervisor	Signature	Date	Date Hazard Abated
------------------------	-----------	------	--------------------

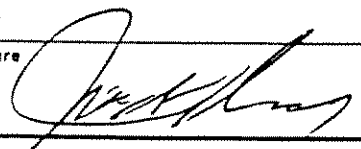
# REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE

## I. Employee's Action

Exhibit-19, Page 6

Area (Specify Work Location)		
Describe Hazard, Unsafe Condition or Practice. Recommend Corrective Action. DUE TO THE LACK OF UNSUFFICIENT CLEANING MAINTENANCE ON THE STATION, SINCE WE ONLY COUNT WITH ONE CUSTODIAL, THE ACCUMULATION OF DUST AND DIRT HAVE AGGRAVATED MY SINUS CONDITION, CAUSING ME TO MAKE USE OF MY SICK LEAVE A SEEKING FOR MEDICAL CONSULTATION, AND SPENDING MONEY ON MEDICATIONS.		
Employee	Signature 	Date and Tour 3-8-95 II

## II. Supervisor's Action

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice. (If Corrective Action Has Been Taken, Indicate the Date of Abatement.) Forward TO Maintenance office		
Supervisor	Signature 	Date 3/21/95

## III. Approving Official's Action (Check One and Complete)

The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement)			
A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change:			
There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:			
Approving Official	Signature	Date	Date Employee Notified

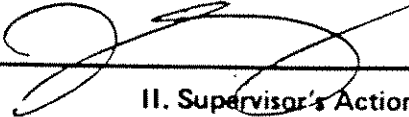
## IV. Maintenance Action (Complete If Necessary)

Maintenance Supervisor	Signature	Date	Date Hazard Abated
------------------------	-----------	------	--------------------

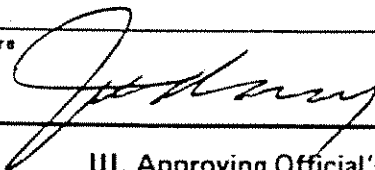
## REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE

## I. Employee's Action


Exhibit-19, Page 7

Area (Specify Work Location) <i>CAMERA Heights Station 00977</i>		
Describe Hazard, Unsafe Condition or Practice. Recommend Corrective Action. <i>THE DUST, DIRT ON Bathrooms etc. Due to not having the correct cleaning Personnel is cause of the problems in allergies, colds and other symptoms in the personnel working in the station. We need more than one person making the cleaning in the station. Other problem in the station is not much space for the storage of boxes or packages.</i>		
Employee	Signature 	Date and Time <i>3-1-95</i>

## II. Supervisor's Action

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice. (If Corrective Action Has Been Taken, Indicate Date of Abatement.)  <i>Forward To Maintenance office</i>		
Supervisor	Signature 	Date <i>3/21/95</i>

III. Approving Official's Action  
(Check One and Complete)

<input type="checkbox"/>	The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement).
<input type="checkbox"/>	A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change:
<input type="checkbox"/>	There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:
Approving Official	Signature 
Date	Date Employ Notified

## IV. Maintenance Action (Complete If Necessary)

Maintenance Supervisor	Signature 	Date	Date Hazard Abated
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## REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE

(Assigned by Safety Office)

## I. Employee's Action

Exhibit-19, Page 8

Area (Specify Work Location) CLERKS + CARRIER SECTION		
Describe Hazard, Unsafe Condition or Practice. Recommend Corrective Action. THE SITUATION OF THE CLEANING + DUST AT CAPAKRA STATION HAS BEEN THE SAME SINCE 1991 VERY LITTLE HAS BEEN DONE TO SOLVE THE PROBLEM. THERE IS ONLY ONE PERSON TO CLEAN THE WHOLE STATION. MANY EMPLOYEES HAS BECOME SICK WITH ALLERGIES, COLDS, FEVER SORE THROAT, MOST OF THE TIME, INCLUDING ME.		
Employee	Signature Hector Ortiz	Date and Tour 3/1/95

## II. Supervisor's Action

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice. (If Corrective Action Has Been Taken, Indicate Date of Abatement.) Forward To Maintenance Office		
Supervisor	Signature Justin	Date 3/21/95

III. Approving Official's Action  
(Check One and Complete)

<input type="checkbox"/> The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement):			
<input type="checkbox"/> A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change:			
<input type="checkbox"/> There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:			
Approving Official	Signature	Date	Date Employee Notified

## IV. Maintenance Action (Complete If Necessary)

Maintenance Supervisor	Signature	Date	Date Hazard Abated
------------------------	-----------	------	--------------------

MOD Date  
4/7/95

1. Complaint Number

2. Employer Name

U.S. Postal Service, Caparra Heights Station

Exhibit-20, Page 1

3. Site Location (Street, City, State, ZIP)

1505 AVE Roosevelt SAN JUAN P.R. 00920

4. Mailing Address (If different) (Street, City, State, ZIP)

5. Management Official

Jose Sepulveda

6. Telephone Number

749-4319

7. Type of Business

Deliveries

8. Hazard Description Describe briefly the hazard(s) which you believe exist. Include the approximate number of employees exposed to or threatened by each hazard.

I AM REPORTING A REINCIDENCE OF A VIOLATION FOUNDED BY OSHA ON 7/10/91

Inspection # 17981838 (see attached papers) to U.S. Postal Service at Caparra Heights Station. Due to lack of maintenance personnel, the cleaning process in a lot of places at Caparra Station have not been done for several years. In consequence, the accumulation of dust, fungus, mice and rats, cockroach eggs and excrements, in addition to a lot of dust within the air conditioner conducts, have done a very polluted environment of imminent danger. When the air conditioners are changed, it takes just 24 hours to takes the dust color, showing the very high density of particles in the air that sometimes seems like a fog or cloud. The air conditioner is recycling the same dusted air causing this fog phenomenon. The Registry section have accumulated great quantity of dust in the roof. When somebody open, close or hit the door the Registry roof shake provoking a rain of dust that falls over the people working at the AR. This situation is causing me, other employees and customers symptoms like sore throats, eyes, mouth and throat itching, eye irritations and respiratory problems causing a high use of sick leave. These health problems are being presented by most of the employees every weeks, causing absences for sickness every weeks.

I think that as a solution to this problem we need a more accurate or effective housekeeping program and at least two more maintenance persons because this is too big and there are a lot of things to clean for the maintenance employees we already have.

9. Hazard Location Specify the particular building or worksite where the alleged violation exists

All the building Caparra Heights Station



☒ Employer ☐ Other Government Agency (specify) \_\_\_\_\_

11. Please indicate your desire  
☐ Do not reveal my name to the Employer ☒ My name may be revealed to the Employer

12. The Undersigned (Mark "X" in one box)  
☒ Employee ☐ Federal Safety and Health Committee  
☐ Representative of Employees ☐ Other (specify) \_\_\_\_\_  
 believes that a violation of an Occupational Safety or Health standard exists which is a job safety or health hazard at the establishment named on this form

13. Complainant Name (Type or print name) Angel David MORALES

14. Telephone Number 789-7157

15. Address (Street, City, State, ZIP) BRISAIDA #35 URB MUÑOZ RIVERA GUAYNABO P.R. 00969

16. Signature Angel Daniel Morales

17. Date 4/7/95

18. If you are an authorized representative of employees affected by this complaint, please state the name of the organization that you represent and your title  
 Organization Name \_\_\_\_\_ Your Title \_\_\_\_\_

## OFFICIAL USE ONLY

19. Reporting ID \_\_\_\_\_ 20. Previous Activity? ☐ Yes ☐ No  
 If Yes enter Type \_\_\_\_\_ Number \_\_\_\_\_

21. Optional Complaint Number \_\_\_\_\_

Identification  
 22. Establishment Name Change? ☐ 23. Site Address Change? ☐ 24. Employer ID (State) \_\_\_\_\_ 25. City Code \_\_\_\_\_ 26. County Code \_\_\_\_\_

Receipt Information  
 27. Received by \_\_\_\_\_ 28. Send OSHA-7? ☐ Yes ☐ No 29. Date \_\_\_\_\_ 30. Time \_\_\_\_\_ AM \_\_\_\_\_ PM \_\_\_\_\_ 31. Supervisor(s) Assigned \_\_\_\_\_ a \_\_\_\_\_ b \_\_\_\_\_

Industry & Ownership  
 32. Primary SIC \_\_\_\_\_ 33. Ownership (Mark "X" in one box)  
 a ☐ Private Sector b ☐ Local Government c ☐ State Government d ☐ Federal Agency/Code \_\_\_\_\_

Complaint Evaluation  
 34. Evaluated by \_\_\_\_\_ 35. Subject and Severity  
 Discrimination ☐ Imminent Danger \_\_\_\_\_ Serious \_\_\_\_\_ Other \_\_\_\_\_  
 Safety ☐ Health ☐

36. Is This a Valid Complaint?  
☐ Yes ☐ No

37. Formality  
☐ Formal ☐ Nonformal

38. ☐ Migrant Farmworker Camp

Complaint Action  
 39. Send Letter  
 a ☐ No Inspection — for Invalid Complaints  
 — Too Vague or Unsubstantiated  
 — Recent Inspection or Objective Evidence  
 (Date of Inspection \_\_\_\_\_)  
 — Not in OSHA's Jurisdiction  
 b ☐ No Inspection — for Nonformal Complaints  
 — No Imminent Danger or No Standard  
 — No Direct Relation to S&H  
 — Not Enough Information To Evaluate  
 c ☐ OSHA-7 for Signature With Letter  
 — Complete or ☐ Partial  
 d ☐ Nonformal Complaint Notification to Employer  
 — Complainant Notified ☐ Explanation of 11(c)  
 e ☐ Complainant Notification With Letter d  
 — Name Not Revealed ☐ Explanation of 11(c)  
 f ☐ Acknowledgement to Complainant (Optional)  
 g ☐ Other (specify) \_\_\_\_\_

40. Date Letter Sent \_\_\_\_\_ 41. Date Response Due (For letters c or d) \_\_\_\_\_

42. Inspection Planned? ☐ Yes ☐ No If Yes Priority \_\_\_\_\_ If No Reason \_\_\_\_\_

43. Transfer to (Name) \_\_\_\_\_ 44. Transfer Date \_\_\_\_\_

45. Transfer to (Category)  
 a ☐ Federal OSHA/Reporting ID \_\_\_\_\_ c ☐ Other Federal Agency/Code \_\_\_\_\_  
 b ☐ State OSH/Reporting ID \_\_\_\_\_ d ☐ State/Local Government  
 e ☐ Other

## 46. Optional Information

Type	ID	Value	Type	ID	Value

47. Total Entries \_\_\_\_\_

Close Complaint 48. ☐ Close Complaint

49. Comments

U.S. Department of Labor

Occupational Safety and Health Administration  
Federal Building, Room 559  
Carlos Chardon Avenue  
Hato Rey, Puerto Rico 00918



Exhibit 21  
Page - 1

June 9, 1995

Mr. Angel David Morales  
#35 Brisaida Street  
Urb. Munoz Rivera  
Guaynabo, PR 00969

Dear Mr. Morales:


In response to your report alleged hazards in your workplace, the Occupational Safety and Health Administration (OSHA) has sent a letter to your establishment requesting that appropriate action be taken to correct the situation. Enclosed is a copy of that letter for your information.

We have requested that your Agency provide us with a copy of the investigation findings and actions taken.

Please let me know if the hazard has not been corrected in the time allowed as shown in the enclosed letter to your agency.

We appreciate your continued interest in workplace safety and health.

Sincerely,



José A. Carpena  
Area Director

Enclosures

/s/ Wp/Lrs/c74325804ltr



## U.S. Department of Labor

Occupational Safety and Health Administration  
Federal Building, Room 559  
Carlos Chardon Avenue  
Hato Rey, Puerto Rico 00918



Exhibit 21, Page 2

June 9, 1995

Mr. Odarit Tirado, General Postmaster  
U.S. Postal Service  
P. O. Box 363367  
San Juan, PR 00936

Dear Mr. Tirado:

On April 4, 1995, the Occupational Safety and Health Administration (OSHA) received a report of alleged hazardous working conditions in your workplace. The specific nature of the report involves a housekeeping issue concerning accumulation of dust, rodents and roaches, and polluted air at the Caparra Height Station. We notified Mr. Candido Lopez by telephone today, and notified him that we would be faxing a letter stating these alleged hazards. Please be advised that on July 10, 1991 citations were issued for identical type of violations (see attachment #1).

We have not determine whether the hazards, as alleged, exist at Caparra Height Station; and we do not intend to conduct an inspection at this time. However, since allegations of violations have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please advise me in writing, no later than June 19, 1995 of the results of your investigation. You must provide supporting documentation of your findings, as well as a description of any corrective action you have taken or are in the process of taking.

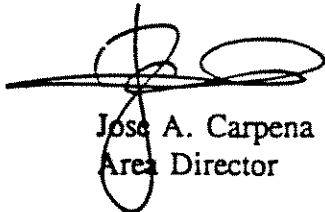
This letter is not a citation or a notification of proposed penalty which, according to the OSH Act, may be issued only after an inspection or investigation of the workplace. It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. We encourage employee participation in investigating and responding to any alleged hazard. If we do not receive a response from you by the stated date indicating what appropriate action has been taken or that no hazard exists and why, an OSHA inspection will be conducted. An inspection may include review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout, and related safety and health issues.

Please note however, that OSHA selects for inspection some cases where we have received letters in which employers have indicated satisfactory corrective action. This is to ensure that employers have actually taken the action stated in their letters.

You are requested to post a copy of this letter where it will be readily accessible for review by all of your employees and return copy of the signed Certificate of Posting (attachment #2) to this office. In addition, you are requested to provide a copy of this letter and your response to it to a representative of any recognized employee union or safety committee, if these are at your facility. Failure to do this may result in an on-site inspection. The complainant has been furnished a copy of this letter and will be advised of your response. Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity.

If you have any questions concerning this matter, please contact me or Madelline Medina at our office. Your personal support and interest in the safety and health of your employees is appreciated.

Sincerely,



Jose A. Carpena  
Area Director

Enclosures

/usr/Wp/Ltrs/74325804ltr

Notice of Unsafe or Unhealthful Working Conditions  
 US Department of Labor - OSHA  
 US Courthouse & FOB - Room 559  
 Carlos Chardon Avenue  
 Hato Rey, PR 00918

Exhibit 2, Page-5

The violation(s) described in this Notice are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below

3. Issuance Date	4. Inspection Number
07/10/91	017981838
5. Reporting ID	6. CSHO ID
0215300	R2692
7. Optional Report No	8. Page No
327	1 of 1

1. Type of Violation(s)	2. Notice Number
Other	01

9. To:  
 U.S. Postal Service  
 GPO Box 3667  
 San Juan, PR 00936

11. Inspection Site:

4/25/91 - 4/25/91

Caparra Heights Sta., 1505 F. D. Roosevelt Ave.  
 San Juan, PR 00922

29 CFR Part 1960 requires that a copy of this Notice be posted in a prominent place at or near the location of the violation(s) cited below. This Notice is posted until the unsafe or unhealthful working conditions have been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. This Notice describes violations of Federal Regulations. You must abate the violation(s) by the date(s) listed below, or in accordance with an established abatement schedule.

12. Item Number	13. Standard, Regulation, or Section of the Executive Order Violated	14. Description	15. Date by Which Violation Must Be Abated
1	29 CFR 1910.22(a)(1):	Places of employment were not kept clean and orderly, or in a sanitary condition:	07/30/91
	a.	At the U.S. Postal Service, Caparra Heights Station, where the general public is serviced and mail is handled, settled dust was observed all over exposed surfaces, like walls, tables, mail carts, AC ducts, among others.	
2	29 CFR 1910.141(a)(5):	A continuing and effective extermination program was not instituted where rodents, insects or other vermin were detected.	07/30/91
	a.	At the U.S. Postal Service, Caparra Heights Station, where the general public is serviced and mail is handled, cockroaches were observed at the employees' rest room.	
16. Area Director	Francisco Encarnacion - Rosa		

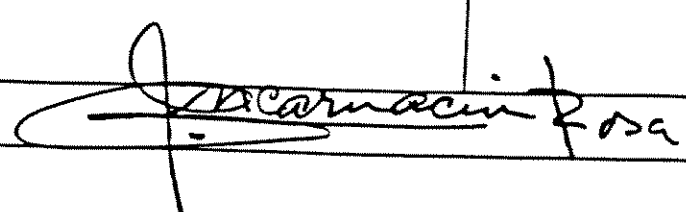


Exhibit-21, Page 6

**CERTIFICATE OF POSTING  
OSHA NOTIFICATION OF ALLEGED HAZARD(S)**

Employer Name:

Complaint Number:

Date of Posting:

Date Copy Given to  
an Employee Representative:

On behalf of the employer, I certify that a copy of the complaint letter received from the Occupational Safety and Health Administration (OSHA) has been posted in a conspicuous place, where all affected employees will have notice, or near such location where the violation occurred, and such notice has been given to each authorized representative of affected employees, if any. This notice was or will be posted for a minimum of ten (10) working days or until any hazardous conditions found are corrected.

Signature

Title

**U.S. Department of Labor**

Occupational Safety and Health Administration  
Federal Building, Room 559  
Carlos Chardon Avenue  
Hato Rey, Puerto Rico 00918



Exhibit -21, Page 7

June 9, 1995

Mr. Candido Lopez  
Safety Manager  
U.S. Postal Service  
Human Resources Room 109  
GMF San Juan, PR 00936-9441

Dear Mr. Lopez:

On April 4, 1995, the Occupational Safety and Health Administration (OSHA) received a report of alleged hazardous working conditions in your workplace. The specific nature of the report involves a housekeeping issue concerning accumulation of dust, rodents and roaches, and polluted air at the Caparra Height Station. We notified you by telephone today, and advised you that we would be faxing a letter stating these alleged hazards. Please be advised that on July 10, 1991 citations were issued for identical type of violations (see attachment #1). Also, a letter was sent today to Mr. Odarit Tirado pertaining this matter.

We have not determine whether the hazards, as alleged, exist at Caparra Height Station; and we do not intend to conduct an inspection at this time. However, since allegations of violations have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please advise me in writing, no later than June 19, 1995 of the results of your investigation. You must provide supporting documentation of your findings, as well as a description of any corrective action you have taken or are in the process of taking.

This letter is not a citation or a notification of proposed penalty which, according to the OSH Act, may be issued only after an inspection or investigation of the workplace. It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. We encourage employee participation in investigating and responding to any alleged hazard. If we do not receive a response from you by the stated date indicating what appropriate action has been taken or that no hazard exists and why, an OSHA inspection will be conducted. An inspection may include review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout, and related safety and health issues.

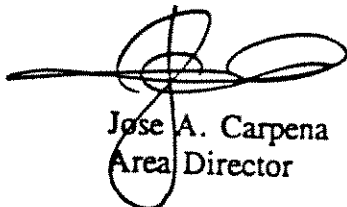
Please note however, that OSHA selects for inspection some cases where we have received letters in which employers have indicated satisfactory corrective action. This is to ensure that employers have actually taken the action stated in their letters.

Exhibit-21, Page 8

You are requested to post a copy of this letter where it will be readily accessible for review by all of your employees and return copy of the signed Certificate of Posting (attachment #2) to this office. In addition, you are requested to provide a copy of this letter and your response to it to a representative of any recognized employee union or safety committee, if these are at your facility. Failure to do this may result in an on-site inspection. The complainant has been furnished a copy of this letter and will be advised of your response. Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity.

If you have any questions concerning this matter, please contact me or Madelline Medina at our office. Your personal support and interest in the safety and health of your employees is appreciated.

Sincerely,



Jose A. Carpena  
Area Director

Enclosures

/usr/Wp/Ltrs/74325804ltr



Exhibit-22

Date: August 1, 1995  
To: José A. Carpena (Area Director)  
Occupational Safety and Health Administration  
Federal Building, Room 559  
Carlos Chardón Avenue  
Hato Rey, P.R. 00918

Dear Mr. Carpena:

Enclosed you will find your letter sent to me for your reference.

The purpose of this letter is to inform you that the safety hazard condition at Caparra Heights Post Office have not been corrected. Letter sended to you from Post Master Odarit Tirado (See enclosed copy) is not correct and is not telling the truth. In addition, they never posted your letter regarding safety violation on bulletin boards as the law require, neither gave a copy to union representative.

As a result, I am requesting that O.S.H.A should follow the investigation and make a visit to Caparra Post Office to investigate what we are suffering.

sincerely:

Angel David Morales

Angel David Morales

Exhibit-23, Page 1

## SWORN STATEMENT

I, **Angel David Morales-Vallellanes**, of legal age, single, property owner and resident of Guaynabo, Puerto Rico, with Social Security number 583-23-1827, being duly sworn and state:

1. That my name and other personal circumstances are as above indicated.
2. That I was employed by the United States Postal Service since 1988 to 1997.
3. That I worked in Caparra Heights Station since 1990 to 1997.
4. That I was victim of several brutal acts by the US Postal Service by management and Supervisors like José Sepúlveda, John Malavé, Enrique López, Frank Girau, Carmen Rosa etc. in retaliation and discrimination due to complaints I filed in OSHA and the EEO office.
5. That among this retaliation acts were included criminal acts like to puncture the tires of my car several times, pour sugar in the fuel tank of my car, dead threats, removal of my job duties, suspensions, expulsions, humiliations, etc.
6. That It was well known by workers of Caparra Station the animosity of Supervisor Enrique López against me for my complaints. Supervisor Enrique López did not made an effort to hide his fury against me for my EEO and OSHA complaints, in fact, on several occasions López expressed clearly in front of other co-workers his fury and animosity for OSHA and EEO complaints. I am including several Sworn Statements by co-workers: Howard Hall; Raymond Ruíz; Samuel Cora; Carmelo Montañez; Alberto Ortiz and OSHA inspector Efigenio Rivera that confirms my allegations.

ADMV

Exhibit -23, Page 2

7. That at all times Supervisor Enrique López and all management in the Caparra Station were aware of my involvement in OSHA complaints due to the poor unsanitary conditions in Caparra Heights Station. As early as June 8, 1995, Supervisor Enrique López and me were involved in a safety inspection done by USPS Safety officer Elizabeth Rivera (See Exhibit 3, page 4). In such inspection I told Elizabeth Rivera in presence of Supervisor López about all the unsanitary conditions in Caparra Station and about my complaint in OSHA that I filed on April 7, 1995. Supervisor López got very angry and whispered in my ear *"sooner of later I am going to take care of you and you are going to pay for this"*.
8. That few days after I spoke to Manager José Sepúlveda about my OSHA complaints and in retaliation for the previous EEO I filed against him, Sepúlveda ordered to change the days off of Job Id 2541417 from Saturday and Sunday to Sunday and Thursday. Such job position was awarded to employee Antonio Lopez who was a very junior employee that later were going to accuse me of a Safety Hazard and homosexual, making the dirty job in this way to the US Postal Management together with supervisor "Lopez" and Manager Sepulveda. Antonio López was identified by Samuel Cora as one of the employees that unlawfully open my private mail. (see exhibit 10) Employee Antonio López was later rewarded with a position of acting supervisor.
9. Management at Caparra knew that I was very interested and that I was waiting for several years a position with Saturday and Sunday. Manager

ADMV

Exhibit-23, Page 3

José Sepúlveda and Supervisors Juan Rodríguez and Enrique Lopez knew that I had a good chance to get this position because I was the second successful bidder last time this position was posted for bidding. Supervisor López alleged that Manager José Sepúlveda and Juan Rodríguez change days off because there were so much people with Saturday and Sunday at Caparra. If that was the case, why he did not change the position when it was posted for bidding about six month ago and employee Luis Rivera was the successful bidder or when employee Ivette Fajardo was the successful bidder about 7 months ago or when employee Mario Izquierdo was successful bidder one year ago or Laura Torres at about 2 years ago. In addition there were 3 employees at Caparra that were assigned to Caparra with Saturday and Sunday who did not have a bided position. Such employees were; Antonio Hernández, Julia Collado and Iván Pagán. Supervisor Juan Rodríguez López and Manager Sepúlveda did not change days off to these employees notwithstanding they were unassigned or not had a bid in Caparra Station so management could easily change days off because they were unassigned.

- ADMU
10. Manager José Sepúlveda, Supervisor Juan Rodríguez and Enrique López waited until I had a good chance to get this position to change days off (Exhibit 4 Statement of Radamés Sierra.) In such statement Radamés Sierra declare that position Id 2541417 was changed deliberately in reprisal against me. Also he said that management was not planning to change this position until they knew that I was interested and had a good chance to get

Exhibit-23, Page 4

such position.

11. As an evidence that Manager José Sepúlveda and Supervisor Enrique López were able to discriminate against any employee who filed complaints; I am submitting a decision made on July 15, 1996 (See Exhibit 7) by arbitrator Roger I Maher where he found that Manager Sepulveda discriminate and retaliate against co-worker Carmelo Montañez. In such decision the US Postal Service is alleging the same management prerogatives as a pretext to discriminate and retaliate.
12. On or about March 1996 union representative Alberto Ortiz went to Caparra Station to settled a letter of warning that Supervisor Enrique López gave me as a retaliation for my OSHA and EEO's complaints. In such meeting supervisor López said to Alberto Ortiz that he was not going to withdraw the letter of warning because Morales has filed an EEO and OSHA complaints against him and that from now on López was going to take care of Morales and watch him very close because Morales was fucking up a lot with his EEO and OSHA complaints. (see Exhibit 11)
13. During my first complaints to OSHA, said agency made me believe that I was protected by the 11(c) of the OSH act and that in case of retaliation I must filed a complaint within 30 days. (See Exhibits 5, 6 and 8 page 2)
14. At all times I followed OSHA instructions regarding the procedure to file a complaint in this way I exhausted all remedies. Surprisingly on or about October 8, 1996 about a year and a half since my first OSHA complaint I received an incredible letter from OSHA telling me that I was not protected

ADMV

Exhibit-23, Page 5

by OSHA and that OSHA decided to send my discrimination and retaliation complaints letters to the US Postal Service. (See Exhibit 9) With this action OSHA revealed to the Postal Service my name and all the allegations I was making against the US Postal Service, leaving me defenseless.

15. On May 18, 1996 I was present when Supervisor Enrique López said in a meeting an angry manner that *"because somebody have filed an EEO complaint against me, now everybody must use timecard and punch in each time an employee takes a break."* (See also Exhibit 13 page 1, paragraph 7)
16. That since October 20, 1993, I was assigned to make the duties of Business Reply Mail, Express Mail and postage due clerk as a reasonable accommodation due to a right arm injury (See Exhibit 1 page 1)
17. That on or about May 18, 1996 Supervisor Enrique López removed me from my duties as Postage Due Clerk, Business Reply Mail Clerk and Express Mail Clerk alleging that from now on all employees were going to rotate their respective duties with all other clerks, however I noticed that this was only a pretext to make me harm (due to my right arm condition) and discriminate against me since López only rotated my duties mostly to Mayra Irene. No other employee was removed from his regular duties, only I was removed without returning to do my duties. Neither any other employee were removed or rotated.
18. I never left accumulate my work as postage due clerk, business reply mail clerk and express mail clerk since I almost never was absent, in fact I was the clerk with best assistance record. When I was on vacation, there were

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Exhibit-23, Page 6

other employees like Hector Ortiz, Mario Izquierdo or Porfirio Aviles that performed my duties without causing any delay. This was in that way for several years without causing any problems until Supervisor Enrique López began to discriminate and retaliate against me. In fact the business reply, express mail and postage due work began to accumulate when Supervisor Enrique López removed me from my regular duties.

19. That I can also testify about the preferences by Supervisor Enrique López in favor of co-worker Mayra Irene at such point that this affected the postal operations and caused undue hardship to other male workers.
20. That Mayra Irene's tour of duty was from 8:00 a.m. to 5:00 p.m. and she almost every day arrived late to Caparra Station.
21. That notwithstanding that Mayra Irene almost every day arrived late, she had the guts and bare face of taking a breakfast in the break room after she punched in her time card. All of this were allowed and promoted by Supervisor Enrique López; however this behavior was not tolerated to any other employees specially males employees. Mayra Irene took her lunch break at about 11:00 a.m. or 11:30 a.m. this is three or three hours and a half after she began her tour of duty at 8:00 a.m. Then she took more coffee breaks during the afternoon, always abusing of her coffee breaks and with the knowledge of Supervisor Enrique López. In fact most of the coffee breaks taken by Mayra Irene were in the Enrique López office while she had fun with Supervisor López.
22. That even though almost all clerks were distribution and window clerk, the

ADMV

Exhibit-23, Page 7

duties among the clerks in Caparra Station were assigned according to their tour of duties. For instance, clerks that began their tour of duties at 5:30 a.m. (like me) were assigned to do distribution clerk duties since it was better for the Postal operations to do such duties early in the morning. Employees that began their tour at 8:00 a.m. (like Mayra Irene) were assigned to window clerk duties because windows operations began at 8:00 a.m. This is why it was very impractical to change duties to any clerk that began his duties early in the morning like me.

23. That on August 24, 1996 Supervisor Enrique López reunited me and co-worker Raymond Ruiz in order to warn us that he was going to watch us very close but specially me. Supervisor Enrique López said that he was going to check our coffee breaks. Also he said to me in an angry manner ***“you think you are very smart because you filed an EEO complaint against me”*** I told him several times that ***“please do not mention the EEO complaints in this meeting because that only shows that you make your decisions against me because the E.E.O. issue and that issue does not have anything to do with this”***. But supervisor Lopez continued speaking about the E.E.O. issue in my presence. However Supervisor Enrique López allowed co-worker Mayra Irene to abuse her coffee breaks.
24. That the secretary's day was never celebrated in Caparra Station because it was not an official holiday and we at Caparra did not have any secretary.
25. On June 6, 1996 and July 10, 1996 Supervisor Enrique López punctured several tires of my car and of two other employees, (See Exhibit 10,

ADMV

Exhibit-23, Page 8

- paragraph 7) I reported everything to the Postal Inspection Service by they never investigated.
26. On January 4, 1997 Supervisor Enrique López and two other employees pour sugar in the fuel tank of my car (See Exhibit 10 paragraph 7) I reported everything to the Postal Inspection Service by they never investigate.
27. Supervisor Enrique López used to open and inspect my private mail (See Exhibit 10 paragraph 8).
28. That on or about February 1997, after two years of struggle and due to the brutal and criminal acts by US Postal Service management against me, I was constructively discharged. I mentally "broke up" and had to look for medical psychiatryc treatment. I filed a claim before Office of Workers Compensation Program (O.W.C.P.). My case was approved since O.W.C.P. decided that there was a hostile work environment against me (See Exhibit 39 Letter of O.W.C.P. official Tery Friend).
29. As a consequence of my constructive discharge I only receive 66% af my salary based on the salary rate I had by 1997. I also suffered the end of benefits payments for my Thrift Savings Plan (retirement plan or 401k), I am not accumulating benefits for the Social Security and I suffered the exhaustion of all my savings and investments like mutual funds and IRA's. I still receiving medical treatment for my mental condition provoked by the retaliation and discrimination of the US Postal Service.
30. That after two years of struggle denouncing the safety hazards in Caparra Heights Station, I was removed on February 20, 1997 from Caparra Station

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Exhibit-23, Page 9

by USPS Postal Manager Virginia Matias. Incredibly Matias told me that she was removing me because I was the safety hazard in Caparra and a homosexual.

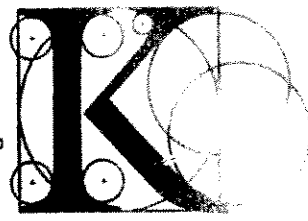
31. This is only a brief summary of all the actions committed by the US Postal Service against me. There are other actions like unfair suspensions, letter of warning, expulsions etc.
32. That all of the above indicated is true under my best knowledge and understanding.

In San Juan, Puerto Rico, this 14 day of November 2005.

  
ANGEL DAVID MORALES-VALELLANES

Affidavit # BA-

Sworn and subscribed before me by **Angel David Morales-Vallellanes**, of the above circumstances, who I identify by drivers license number 1272516. In San Juan, Puerto Rico, this 14 day of November 2005.

Abogada Notario  
  
Karen M. Rodriguez

  
NOTARY PUBLIC

window clerk at the Caparra Heights, Puerto Rico, Station of the United States Postal Service. On April 7, 1995, plaintiff **[\*\*3]** filed a letter with OSHA complaining of dust accumulation, rodent infestation, and other unsanitary conditions at the Caparra Heights station. OSHA ordered the station manager to correct the violations by June 19, 1995, but to no avail. Morales renewed his OSHA complaint through certified letters to the OSHA Area Director on August 1, 1995, February 23, 1996, and April 6, 1996. Finally, on June 14, 1996, OSHA conducted a formal inspection of the Caparra Heights station and confirmed plaintiff's allegations. OSHA cited the Caparra Heights station for at least five violations, and directed the station to remedy the safety and health hazards by October 9, 1996.

At this point, we bifurcate our chronology of the subsequent events for purposes of clarity, turning first to the circumstances that spawned Morales's claims against the Postal Service, and concluding with an account of the events underlying plaintiff's claims against the Union.

#### A. Events underlying the claims against USPS

Throughout the OSHA complaint process, the agency assured Morales that his identity as an OSHA complainant would be kept confidential, and that federal law forbade USPS from retaliating or discriminating **[\*\*4]** against him for whistle-blowing. Nevertheless, plaintiff's amended complaint alleges that by July 1995 other employees at the Caparra Heights station were aware that he had filed OSHA complaints, and were retaliating against him. That month, Morales alerted the Postal Inspection Service that he had received two threats from co-workers, but no remedial steps were taken.

In January 1996, plaintiff expressed interest in an available distribution and window clerk position with Saturdays and Sundays off. n1 USPS then allegedly re-classified the position to offer only Sundays and Thursdays off so as to decrease its desirability to plaintiff. On March 23, 1996, Enrique Lopez, the Caparra Heights station supervisor, issued a letter of warning to Morales for unsatisfactory performance, citing the plaintiff's "abuse of coffee breaks." Two months later, Lopez removed Morales from his position as a Business Reply Mail Clerk, Postage Due **[\*13]** Clerk and Express Mail Clerk, n2 and replaced him with a female co-worker. In July 1996, tires on Morales's car were punctured on two separate occasions while the car was parked in the secured Caparra Heights station parking lot.

----- Footnotes -----

n1 At oral argument, plaintiff's counsel explained that the Caparra Heights station operates twenty-four hours a day, seven days a week. While employees at the post office typically work only five days a week, the allotted days off for many positions do not correspond with the weekend. **[\*\*5]**

n2 Morales alleges that he was assigned to this position as a reasonable accommodation for a job-related injury. It appears that plaintiff suffered from a physical disability that limited the stress he could place on his right arm. This disability restricted the tasks that plaintiff could painlessly perform at work, and allegedly provided USPS with a pretext for excluding him from the workplace in February 1997. See *infra*.

----- End Footnotes -----

On October 10, 1996, Morales's contact at OSHA informed him that the agency had no authority to protect postal employees from retaliation, and urged the plaintiff to request USPS to conduct an internal investigation. Without seeking Morales's consent, OSHA forwarded his file to the Postal Service, thereby confirming to USPS that plaintiff was in fact the whistle-blower. From that point on, the retaliation and discrimination directed at plaintiff worsened considerably. Morales alleged that in December 1996 he was victimized by episodes of name-calling and bullying, and later that month he was suspended one week for violating a new uniform policy instituted by Lopez. In **[\*\*6]** January 1997, a postal employee poured sugar into the gas tank of plaintiff's car, nearly resulting in a traffic accident. On at least three occasions in February, plaintiff's supervisor dismissed him from work without pay because "there was no work available for him." Finally, on February 20, 1997, plaintiff was transferred from the Caparra Heights station to the General Post Office in San Juan. Morales alleges that he was removed from the Caparra Heights station because co-workers accused him of being "a safety hazard and a homosexual."

These events prompted Morales to file four Equal Employment Opportunity (EEO) complaints with the USPS. n3 Plaintiff filed his first precomplaint on February 15, 1996, in the aftermath of USPS's decision to alter the allotted days off for the available distribution and window clerk position. His second EEO precomplaint, submitted April 25, 1996, alleged that a new coffee and lunch break policy instituted at the Caparra Heights station unfairly discriminated against male postal employees. After the USPS failed to respond to his first precomplaint, Morales filed a formal EEO complaint on April 3, 1996, alleging that USPS unlawfully retaliated against **[\*\*7]** him by posting the available window clerk position with Thursday/Sunday rest days rather than Saturday/Sunday rest days. He subsequently filed a second formal EEO complaint on September 5, 1996, citing the discriminatory break policy and another episode of retaliation. Plaintiff finally left the employ of the USPS in early September 1997, allegedly as the result of a constructive discharge.

----- Footnotes -----



binding grievance procedures in the Postal Service collective bargaining agreements." Id. at 386 (quoting Ellis v. U.S. Postal Service, 784 F.2d 835, 839-40 (7th Cir. 1980)). Accordingly, Roman's recourse was limited to the procedural rights enshrined in that agreement:

Roman's allegation that the Postal Service violated his due process rights in threatening him and forcing him to resign does not provide jurisdiction. Where Congress has created an elaborate, remedial scheme which adequately and comprehensively addresses the protection of constitutional rights in the employment context, an employee whose rights are protected through that scheme cannot **[\*\*20]** bring a new, non-statutory action.

Id. at 385-86 (emphasis added).

However, **HN7** just as Congress may limit an employee's avenues of redress for certain constitutional claims by establishing "an elaborate remedial scheme" that adequately addresses such claims, it also has the power to create multiple rights of action to redress other types of employment injuries. **[\*\*18]** Thus, as the Supreme Court ruled in Alexander, the legislative history of Title VII reflects Congress's intent to provide employees victimized by retaliation or discrimination with an additional statutory right of action wholly independent of the CBA. Alexander, 415 U.S. at 48-49. The district court therefore erred in concluding that the collective bargaining agreement between USPS and APWU furnished Morales's sole avenue of recourse for his retaliation and discrimination claims.

**HN8** Judicial recourse under Title VII, however, is not a remedy of first resort. See Jensen v. Frank, 912 F.2d 517, 520 (1st Cir. 1990) ("Title VII requires exhaustion of administrative remedies as a condition precedent to suit in federal district court."). USPS's EEO Guidelines, promulgated pursuant **[\*\*21]** to 42 U.S.C. § 2000e-5, prescribe a lengthy administrative process that plaintiffs must exhaust prior to filing a Title VII action in district court. Here, Morales argues that USPS failed to provide any formal disposition of his two formal EEO complaints within the established 180-day window, see 29 C.F.R. § 1614.107(c), thereby entitling him to pursue his claims in district court. Plaintiff buttresses his assertions with two letters from USPS formally dismissing his EEO complaints. Each letter informed Morales that "if you are dissatisfied with the Postal Service's final decision in this case, you may file a civil action in an appropriate U.S. District Court . . ."

USPS argues on appeal that even if plaintiff may theoretically look outside the collective bargaining agreement to an alternative source of relief under Title VII, he forfeited his right of action by neglecting to file any EEO complaints addressing the vast majority of the discriminatory and retaliatory incidents described in the amended complaint.

We agree with USPS that Morales's Title VII cause of action is limited to those discrimination and retaliation **[\*\*22]** allegations in his amended complaint that were previously the subject of a formal EEO complaint. As we read the EEO dismissal letters, this universe is limited to the following three allegations:

- (1) Morales's allegation that Job Bid # 2541417 was posted with Thursday/Sunday rest days rather than Saturday/Sunday rest days in retaliation for plaintiff's OSHA complaints
- (2) Morales's allegation of sexual discrimination and retaliation arising from an April 9, 1996 incident in which plaintiff's duties and responsibilities were awarded to a female employee and he was given window clerk duties to perform
- (3) Morales's allegation that the "coffee and lunch breaks" policy was not applied in an equal and nondiscriminatory matter

We reject USPS's insinuation on appeal that summary disposition of these surviving claims is appropriate at this time. While **HN9** it is within our discretion to affirm the district court's entry of summary judgment on any ground revealed by the record, Houlton Citizens' Coalition v. Town of Houlton, 175 F.3d 178, 184 (1st Cir. 1999), any determination of whether Morales's Title VII claims can survive summary judgment is premature. **[\*\*23]** As a consequence of the district court's erroneous presumption that Morales's claims were solely actionable under the CBA, no court has analyzed the record to determine whether Morales has raised a material dispute of fact that compels a trial on his surviving Title VII claims. Under these circumstances, we believe the preferable practice is to remand to the district court. See United States v. Gell-Iren, 146 F.3d 827, 831 **[\*\*19]** (10th Cir. 1999) ("A factual record must be developed in and addressed by the district court in the first instance for effective review."). However, Morales is precluded on remand from seeking relief for a plethora of other acts of discrimination and retaliation alleged in his amended complaint, including the discrete acts of bullying, intimidation, and vandalism by his co-workers, his seven-day suspension for violating the USPS uniform policy, his transfer from the Caparra Heights station, his day-long "expulsions" from work in February 1997, his constructive discharge, and his internal grievances against APWU. n7

----- Footnotes -----



n7 Plaintiff's internal grievances against APWU are theoretically actionable under Title VII, which provides that "it shall be an unlawful employment practice for a labor organization to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(c)(1); see, e.g., Thorn v. Amalgamated Transit Union, 305 F.3d 826, 831-32 (8th Cir. 2002). However, the district court correctly adopted the magistrate judge's determination that Morales failed to exhaust the administrative remedies provided by the Union's bylaws:

Plaintiff should have exhausted the contractual remedies provided to him as to any claim against the Union and/or its agents which is not established as a breach of its duty of fair representation, such as his removal from shop steward position. He failed to exhaust internal union appeal process.

Consequently, Morales has forfeited any Title VII claim arising from his internal union grievances. In reaching this conclusion, we reject as untenable Morales's complaint that he was unfairly surprised by the magistrate judge's partial reliance on an exhaustion rationale for disposing of his claims against APWU. The record conclusively demonstrates that APWU put the exhaustion point at issue throughout the litigation before the magistrate judge. For this reason, the exhaustion arguments and supporting exhibits raised for the first time before the district court were inadmissible due to Morales's failure to present these materials to the magistrate judge. See Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 991 (1st Cir. 1988) ("Systemic efficiencies would be frustrated and the magistrate's role reduced to that a mere dress rehearsal if a party were allowed to feint and weave at the initial hearing, and save its knockout punch for the second round.").

----- End Footnotes -----

[\*\*24]

C. Residual Claims

Our resolution of Morales's CBA and Title VII claims disposes of his conspiracy claim. <sup>HN10</sup> "A civil conspiracy is a combination of two or more persons to do an unlawful or criminal act or to do a lawful act by unlawful means for an unlawful purpose." Ammlung v. City of Chester, 494 F.2d 811, 814 (3d Cir. 1974); see also Maryland Casualty Co. v. Hosmer, 93 F.2d 365, 366 (1st Cir. 1937). The only predicate acts cited in the amended complaint that possibly establish a basis for conspiracy liability are 1) APWU's removal of plaintiff as shop steward, 2) USPS's decision to transfer plaintiff out of the Caparra Heights station, and 3) plaintiff's alleged constructive discharge. We have concluded, however, that Morales failed to preserve a right of action for any of these three alleged offenses. Morales's surviving Title VII claims, see supra, implicate only unilateral decisions or policies of USPS that cannot form the gravamen of a civil conspiracy claim. See Ammlung, 494 F.2d at 814.

With regard to Morales's emotional distress claim, even assuming the truth of the surviving Title VII allegations, USPS's **[\*\*25]** conduct does not rise to the level of "extreme and outrageous," "beyond all possible bounds of decency," or "utterly intolerable in a civilized community." Santiago-Ramirez v. Sec'y of Dept. of Defense, 62 F.3d 445, 448 (1st Cir. 1995). Consequently, plaintiff's intentional infliction of emotional distress claim fails as a matter of law.

**[\*20] IV.**

We affirm the judgment entered for defendants on counts II, III, and IV of Morales's amended complaint. We vacate the judgment entered on count I and remand for proceedings not inconsistent with this decision. All parties shall bear their own costs.

So ordered.

Exhibit 25, Page 1

## CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #3 Pg. 1 of 186IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICOANGEL DAVID MORALES  
VALLELLANES

Plaintiff

v.

UNITED STATES POSTAL  
SERVICES, ET AL

Defendants

CASE NO.: 97-2459  
(JAG) (GAG)

## ORAL EXAMINATION DEPOSITION TRANSCRIPT

OF

MR. ENRIQUE LÓPEZ MOLINA

Date : Thursday, May 20, 2004

Time : 9:00 a.m.

Place : OFFICE OF MIGUEL MIRANDA GUTIÉRREZ, ESQ.  
#22 Mayagüez Street  
Hato Rey, Puerto Rico

Taken by : Miguel E. Miranda Gutiérrez, Esq.

Notary Public : Miguel E. Miranda Gutiérrez, Esq.

This is the transcript of the proceedings related to the taking of deposition of the same and the testimony given.

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ADVANCED COMPUTYPE BUSINESS SUPPORT SERVICES

#64 Ponce Street

Hato Rey, Puerto Rico 00917

(787) 758-7029

**CERTIFIED TRANSLATION**

18-Mar-05 T. #05-906 #3 Pg. 21 of 186

1 track, the official talk, a letter of admonishment,  
2 afterward suspension, well, usually I would do it on three  
3 occasions, when I would verbally say to him, "Look, you  
4 have to do this, please, fix it." And if I saw that the  
5 person, well, I don't know, had woken up on the wrong side  
6 of the bed and wanted to do it his way, well, one had to  
7 do, his performance had to be satisfactory.

8 Q One question, then, based on what you  
9 indicate, the unsatisfactory performance...

10 A Yes.

11 Q ...does not necessarily have to do with  
12 the way that an employee handles his job or the duties  
13 of...?

14 A Well, also.

15 Q Are they included there?

16 A Yes, yes, because if I tell you to take  
17 the, this box from A to B, and I give you some  
18 instructions as they are established and it so happens  
19 that you, prior to arriving to area B, stop to do other  
20 things, well, I'll tell you that your performance should  
21 be the way that has been established.

22 Q Did you ever reprimand Maria Irene due to  
23 unsatisfactory performance?

24 A No, not to my recollection.

25 Q No. Do you know if she was in the habit

Exhibit 25, page 3

**CERTIFIED TRANSLATION**

18-Mar-05 T. #05-906 #3 Pg. 22 of 186

1 of arriving late in the morning when she came in to  
2 work?

3 A No, not that I recall.

4 Q You don't recall.

5 A No, no.

6 Q No?

7 A No.

8 Q And is your best recollection that she did  
9 not come in late?

10 A No, because...

11 Q To your recollection, Mr. Enrique.

12 A Yes, yes, no, because then, hum, María  
13 Irene, if I'm not mistaken, that young lady would come in  
14 around nine.

15 Q Okay.

16 A At nine. The Letter Carriers in Caparra,  
17 if I recall correctly, come in at seven thirty.

18 Q Yes.

19 A Seven thirty, seven, around that, I don't  
20 recall the time. For me, the critical time is as soon as  
21 they come in, from the time that the Letter Carriers start  
22 until they distribute all the mail, or at least to have on  
23 paper that that is going to be the action plan of the  
24 morning. And that would take me from seven, seven thirty  
25 until ten thirty to eleven. That is, if I was unable to do

Exhibit 25, page 4

CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #3 Pg. 23 of 186

1 it in that period of time, I would lose the game.

2 Q Yes.

3 A You know, if she came in at nine, and  
4 came in, you know, there would be no way for me to know  
5 that because I could not, with all the rush that I have  
6 for everything to come out right, the operation, I cannot  
7 be standing in front of a clock to see who clocks in and  
8 at what time. Because my main thing was to see the Letter  
9 Carriers that had reported in and that the work be done.

10 Q But did you supervise María Irene at any  
11 time?

12 A Yes, as I told you, during those times  
13 that I would go to provide support to my coworker, when he  
14 went away on vacation.

15 Q To your recollection, did you ever correct  
16 María Irene's card manually because of the arrival time,  
17 to your recollection?

18 A Hum, I remember that on one specific  
19 occasion...

20 Q Yes.

21 A ...Yes, it was corrected, it was Rita  
22 Maldonado. Because it was during Secretary's Week and  
23 I took three females that were around at that time,  
24 she was there, Rita Maldonado was there. And for  
25 Secretary's Week I took them to out to eat.

Exhibit 25, Page 5

**CERTIFIED TRANSLATION**

18-Mar-05 T. #05-906 #3 Pg. 24 of 186

1 Q You took them out to eat.

2 A Yes.

3 Q Okay. And on that occasion, then, but it  
4 was Secretary's Week, but, were her duties those of a  
5 secretary?

6 A No, no, but since they were females so as  
7 not to... If I took Rita Maldonado and left the other one  
8 alone, well, it was going to seem, not right. And also I  
9 don't tend to go out alone with anyone, that is, I always,  
10 thank the Lord, I've known how to take care of myself,  
11 well, it was going to seem a little bit out of place if I  
12 took one and left the other. Well, so that everything  
13 would come out right, I took both of them and that  
14 wouldn't give rise to anything.

15 Q Did the Caparra station have a secretary  
16 position as such, whether as...?

17 A Well, Rita, no she was... hum... not as  
18 such, no.

19 Q No?

20 A No, she was General Clerk.

21 Q General Clerk. So, and Office Clerk.

22 A Office clerk, if you want to put it that way.

23 Q And what was María Irene?

24 A She was Window Distribution Clerk.



Exhibit 25, Page 6

## CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #3 Pg. 25 of 186

1 Q Window Distribution Clerk.

2 A Yes.

3 Q And you were telling me that during that  
4 Secretary's Week there could have been, or I believe you  
5 remembered, some correction or whatever, some note from  
6 you concerning her arrival time?

7 A Yes, yes, because I think that Rita had  
8 half an hour, and half an hour was not going to be long  
9 enough to have lunch. And then it was not feasible, after  
10 I invited them to lunch for Secretary's Week for me to  
11 penalize them and say to her, "Well, you're going to have  
12 to charge that half hour to vacation time."

13 Q Yes.

14 A Because that wouldn't be fair.

15 Q Okay. I would like you to review this  
16 document. Before anything else. Do you know Angel David  
17 Morales?

18 A Yes, yes.

19 Q In what capacity?

20 A As such, yes, he was, or is, but he was in  
21 the Caparra Heights Station.

22 Q I would like to know, I would like for you  
23 to examine this first. Let's go off the record for a  
24 moment, please.

25 [OFF THE RECORD]

U. S. POSTAL SERVICE ROUTING SLIP		DEPT., OFFICE OR ROOM NO.	<input type="checkbox"/> APPROVAL <input type="checkbox"/> SIGNATURE <input type="checkbox"/> COMMENT <input type="checkbox"/> SEE ME <input type="checkbox"/> AS REQUESTED <input type="checkbox"/> INFORMATION <input type="checkbox"/> READ AND RETURN <input type="checkbox"/> READ AND FILE <input type="checkbox"/> NECESSARY ACTION <input type="checkbox"/> INVESTIGATE <input type="checkbox"/> RECOMMENDATION <input type="checkbox"/> PREPARE REPLY
TO:	1 A.D. Morales.	Exhibit 26	
2			
3			
4			
5			
FROM: ENRIQUE Lopez		EXTENSION	
DATE 11/10/97		ROOM NO.	
REMARKS:			
<p>Mr. Morales, I instructed you to notify parcels. You refuse, because you allege that you can not fulfill the responsibility of your position. You have the right to request a light duty assignment. I don't have work that you can do as you allege. Therefore, I'm sending you home until you can fulfill your duties and responsibility.</p> <p><i>[Signature]</i></p>			

ITEM 0-13  
Aug. 1976 (Formerly Form 13)

(Additional Remarks on Reverse)

USGPO 1984-554-232

Exhibit 26

Exhibit-27, Page 1

## CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #1 Pg. 1 of 138IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICOANGEL DAVID MORALES  
VALLELLANES

Plaintiff

v.

UNITED STATES POSTAL  
SERVICES, ET AL

Defendants

CASE NO.: 97-2459  
(JAG) (GAG)

## ORAL EXAMINATION DEPOSITION TRANSCRIPT

OF

MRS. CARMEN ROSA PERALES

Date : Thursday, May 6, 2004

Time : 9:25 a.m.

Place : OFFICE OF MIGUEL MIRANDA GUTIÉRREZ, ESQ.  
#22 Mayagüez Street  
Hato Rey, Puerto Rico

Taken by : Miguel E. Miranda Gutiérrez, Esq.

Notary Public : Miguel E. Miranda Gutiérrez, Esq.

This is the transcript of the proceedings related to the taking of deposition of the same and the testimony given.

---

*ADVANCED COMPUTYPE BUSINESS SUPPORT SERVICES*

*#64 Ponce Street*

*Hato Rey, Puerto Rico 00917*

*(787) 758-7029*

Exhibit -27, Page -2

## CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #1 Pg. 58 of 138

1 Q Once the case is approved, that's what I'm  
2 talking about.

3 A Correct.

4 Q The procedure, let's say, Mrs. Carmen, let's  
5 say that X employee, who filed a complaint and formally  
6 requested the complaint, right?, and it was approved in the  
7 United States and the investigative process began, my  
8 question is, did you normally begin with the allegations  
9 that the employee made, or not necessarily was it that way?  
10 In general, how does the investigation begin?

11 A One would let management know who was named  
12 as the party that was discriminating against the employee,  
13 and one let it know that, "the employee's case has been  
14 accepted for investigation"...

15 Q Okay.

16 A ... "and I need to get an affidavit from you  
17 and these are the allegations," and one would let them know  
18 what were the allegations and the managerial employee had to  
19 make an affidavit related to those allegations.

20 Q Okay. I'm going back a little bit. Since the  
21 first thing, before demanding the affidavits from the  
22 managerial employee, right?, what you had previously, while  
23 the acceptance arrived, right?, that comes from the United  
24 States, you would begin the investigation with the  
25 allegations that the employee made to ascertain whether they  
26 were true or not, right?

Exhibit - 28

March 23, 1996

John Malave  
District Manager-Postmaster San Juan  
585 Ave Roosevelt  
San Juan P.R. 00936-9998

Dear John Malave:

On March 5, 1996 we have a safety captain meeting in which I made you aware about the poor health, safety and unsanitary conditions at Caparra Heights Station. Also, I made you aware about my several complaints that I have filed with O.S.H.A. (Occupational Safety and Health Administration) and all the sufferings and illness that have all employees at Caparra Station due to these unsanitary conditions. I remember that you made a compromise to enforce very strictly the safety regulations and to support all the safety captains at the meeting. In addition, you told me that you were going to take care about the Caparra Station problem.

Same day afternoon, you went to Caparra Station supposedly to investigate my allegations about Caparra's Health and sanitary conditions. Next day (March 6, 1996) I felt very happy when my fellow co-workers told me that you were at Caparra Station the day before. Next day (March 7, 1996) I was being investigated by the Postal Inspection service for third time about the Luis Ramos issue. The first two occasions that this issue was investigated nothing was found, but surprisingly, a third investigation was opened. However, the unsanitary conditions at Caparra Station have not been investigated and remain intact.

I am wondering if this is the support that we the safety captains are going to receive from the Postal Service due to our safety involvement. As you told us, **Safety is First.**

Sincerely

Angel David Morales

Angel David Morales  
Distribution and window clerk  
and Safety Captain at  
Caparra Heights Station

Exhibit-29

DISTRICT MANAGER  
CARIBBEAN DISTRICT



UNITED STATES  
POSTAL SERVICE

March 26, 1996

Mr. Angel David Morales  
Safety Captain  
Caparra Heights Station  
San Juan PR 00922-9998

Dear Angel David:

The safety and health of all the postal employees in the Caribbean is our number one priority. The Safety Captain Program is composed of employees who have a genuine desire to improve the working conditions of their fellow employees, by identifying and informing their supervisors of known safety hazards.

On March 5, 1996, I participated in the initial Safety Captain's meeting and I made it my personal commitment to visit all the sites where a safety hazard was identified; that same day, I visited Caparra Heights station to investigate the safety hazard you had identified. Supervisor José Rodriguez informed me that he had knowledge of the report you had submitted, and was in the process of correcting it. As a follow-up, I informed the manager of maintenance to expedite supervisor's Rodriguez request.

The visit to the Caparra Heights Station by the Inspection Service has no relations what-so-ever with the Safety Captain Program. Instead, the Postal Inspectors are investigating a series of complaints given by distribution clerk, Luis Ramos, about violence in the workplace which together with safety hazards are the biggest deterrent of a productive working environment.

Remember, the Safety Captain Program is a management tool, for both management and bargaining unit employees to work together towards the overall improvement of the workplace environment. Bargaining unit employees perform this task voluntarily, but SAFETY is everyone's responsibility.

  
John Malave  
District Manager/PM



CAPARRA HEIGHTS STA  
1505 AVE FD ROOSEVELT  
SAN JUAN PR 00920-9998

Exhibit-30



Subject: **Letter of Warning**

To: Angel D. Morales  
Full-Time Window/Distribution Clerk  
Caparra Heights Station

Date: March 23, 1996

This official Letter of Warning is being issued to you for the following reason(s):

Charge 1: You are charged with Unsatisfactory Performance.

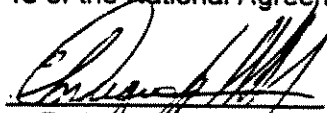
Mr. Morales, on March 22, 1996, you were away from you assigned work area without authorization from your immediate supervisor.

Your immediate supervisor Mr. Enrique Lopez, was monitoring the box section when he notice that you were not present. He searched all over the Caparra Heights Station including the lobby and the platform section. Your absence was noticed at 1335 and it wasn't until 1350 that you walk in through the platform entrance. You approach Mr. Lopez and you stated, "Lopez, I went to my car and I fell asleep. During the time mention above you were not on official break.

"All employees must give a full day's labor for a full day's pay; giving to the performance of duties earnest effort and best thought."

It is hoped that this official Letter of Warning will serve to impress upon you the seriousness of your actions and that future discipline will not be necessary. If you are having difficulties which I may not be aware of or if you need additional assistance or instructions for improving your performance, please call on me, or you may consult with other supervisors and we will assist you where possible. However, I must warn you that future deficiencies will result in more severe disciplinary action being taken against you. Such action may include suspensions, reduction in grade and/or pay, or removal from the Postal Service.

You have a right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of the letter.

  
Enrique Lopez  
Customer Services Supervisor

I have received the original of this letter on:

3/23/96

Employee Signature: Angel David Morales Soc. Sec. No. 583-23-1827

CAPARRA HEIGHTS STA.  
1505 AVE FD ROOSEVELT  
SAN JUAN PR 00920-9998

Exhibit-31 page 1



Subject: Letter of Warning

To: Angel D. Morales  
Full-Time Window/Distribution Clerk  
Caparra Heights Station

Date: December 13, 1996

This official Letter of Warning is being issued to you for the following in reason(s):

Charge 1: You are charged with failure to follow instructions.

Mr. Morales, on October 26, 1996, I gave you a Work Restriction Evaluation Form for Light Duty. This action was a result of your refusal to compile with the duties assigned to you as a Window Distribution Clerk. You have stated that you have a limitation on one of your hands. Mr. Morales, I gave you specific and direct instructions to have the form complete and return it to me during the following week. These instructions were witnessed by Mr. Hector Ortiz and Mr. William Morales.

On November 7, 1996, I ask you for the medical evaluation and informed you that the information was needed in order to determine what your limitations were. When I requested the form you answered "cuando llegue yo te la entrego" (when it gets here, I will give it to you). My request and your response was witnessed by Mr. William Morales. At this moment I informed you that a fitness for duty would be scheduled and for a second time I requested the form. Mr. Morales, to this date you have refuse to obey and follow direct instructions given to you.


"Employees must obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual will nevertheless carry out the order and immediately file a protest in writing to the official in charge of the installation, or appeal through official channels." ELM 666.51

It is hoped that this official Letter of Warning will serve to impress upon you the seriousness of your actions and that future discipline will not be necessary. If you are having difficulties which I may not be aware of or if you need additional assistance or instructions for improving your performance, please call on me, or you may consult with other supervisors and we will assist you where possible. However, I must warn you that future deficiencies will result more severe disciplinary action being taken against you. Such action may include suspensions, reduction in grade and/or pay, or removal from the Postal Service.

Exhibit 31, Page-2

- 2 -

You have a right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of the letter.

  
Enrique Lopez  
Customer Services Supervisor

I have received the original of this letter on: \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Soc. Sec. No. 583-23-1827

CAPARRA HEIGHTS STA.  
1505 AVE FD ROOSEVELT  
SAN JUAN PR 00920-9998

Exhibit - 32



Subject: Notice of Suspension of seven days.

To: Angel D. Morales  
Full-Time Window/Distribution Clerk  
Caparra Heights Station

Date: December 20, 1996

You are hereby notified that you will be suspended for a period of seven (7) calendar days effective at 0530 a.m. on January 18, 1997. You are to return to duty at your regularly scheduled reporting time on your first regularly scheduled day following January 24, 1997. The reason for the suspension is.

Charge 1: You are charged with failure to follow instructions.

Mr. Morales, prior to December 17, 1996, two service talks were given regarding the correct usage of the clerks uniform. On December 17, I gave official talk regarding the proper usage of the uniform to all clerks in the station. You were present at this meeting, Mr. Hernandez was also present. I instructed that clerks are not allowed to wear any part of the carrier's uniform. On December 18, 1996, A/Manager, Luis A. Hernandez, gave you a specific and direct instruction, that you are not to wear any part of the carrier's uniform. I was present when the instruction was given to you. Mr. Morales, you refuse to follow instructions given to you.

Mr. Morales, on December 13, 1996, you were issued a letter of warning for failure to follow instructions.

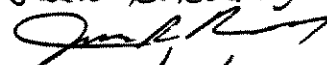
"Employees must obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual will nevertheless carry out the order and immediately file a protest in writing to the official in charge of the installation, or appeal through official channels." ELM 666.51

You have a right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of the letter.

  
Enrique Lopez  
Customer Services Supervisor

I have received the original of this letter on: \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Soc. Sec. No. 583-23-1827

WITNESS JUAN R. RODRIGUEZ  
  
12/20/96

U.S. Postal Service

**EMPLOYEE PROBATIONARY PERIOD EVALUATION REPORT**

(See Instructions on Reverse)

7/85  
Exhibit-33

1a. Employee's Name  Morales, Angel	1b. Employee ID  583-23-1827	1c. Title or D/A  Dist. Clk	1d. Pay Loc.	2a. Date Appointment  07-02-88	2b. Prob. Ends  09-29-88
---	------------------------------------	-----------------------------------	--------------	--------------------------------------	--------------------------------

3a. Return 30-Day Report by  08-01-88	3b. Return 60-Day Report by	3c. Return 80-Day Report by
---	-----------------------------	-----------------------------

<b>Overall Rating at 30 / 60 (circle one) Days</b>  <b>Also Rate Specific Factors</b> → <input checked="" type="checkbox"/> Meets or Exceeds Expectations at this Time <input type="checkbox"/> Does Not Fully Meet Expectations at this Time <input type="checkbox"/> Fails to Meet Expectations. Separation Recommended. (See NOTE in Instructions.)	<b>Factor Ratings (Circle Number)</b> <table border="0"> <tr> <td><b>A</b></td> <td><b>B</b></td> <td><b>C</b></td> <td><b>D</b></td> <td><b>E</b></td> </tr> <tr> <td>②</td> <td>②</td> <td>②</td> <td>3</td> <td>3</td> </tr> <tr> <td>1</td> <td>1</td> <td>1</td> <td>②</td> <td>②</td> </tr> <tr> <td></td> <td></td> <td></td> <td>1</td> <td>1</td> </tr> </table> 3 = Exceeds Expectations 2 = Meets Expectations 1 = Does NOT Meet Expectations	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	②	②	②	3	3	1	1	1	②	②				1	1	<b>Final Overall Rating (80-Day Report Only)</b> ← <b>Also Rate Specific Factors</b> <input type="checkbox"/> Meets or Exceeds Expectations. Retention is Recommended. <input type="checkbox"/> Does Not Meet Expectations. Separation Recommended. (See NOTE in Instructions.)
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>																		
②	②	②	3	3																		
1	1	1	②	②																		
			1	1																		

**Provide Supporting Comments for Your Factor Ratings & Recommendations**

Mr. Morales has performed his workrelated duties in an efficient manner he follows instructions very well, he has a positive attitude toward his work and he gets along very well with fellow-employees and his superiors as well.

Mr. Morales has demonstrated his eagerness to learn other responsibilities and he is very cautious about our safety standards, He is very cooperative and his attendance so far has been excellent, I consider this employee to be an asset to the postal service.

Supervisor's Signature

Louis Froche

Date

7-24-88

Employee's Signature, Indicating that the Evaluation has been Reviewed

Angel Daniel Morales

<b>Section I</b> <b>Performance Expectations for ____-Day Period</b>	<b>Factor A: Attendance/Punctuality</b>  Employee has been punctual his attendance has been excellent so far -, and must maintain this consistency.	<b>Factor D: Task Performance</b>  Employees performance has been v very good, he gets involve in the overall work-related operations and meets objectives. He seeks other responsibilities.
	<b>Factor B: Following Directions</b>  Employee is very cooperative, follows instructions well, he is always willing to help his fellow-employees, and is very alert in our safety policy.	<b>Factor E: Job Knowledge</b>  Employees performs very well in a all the related work areas, and c contributes very effective to the operation,
	<b>Factor C: Compliance with Regulations (safety, dress/footwear, conduct)</b>  Employee complies with the rules and regulations, his conduct has been excellent, he wears the proper work clothes and footwear to perform his work in a safely manner.	
	Initial to Indicate that Expectations have been Jointly Discussed: _____ Session Date: _____	

A.D.M.

Exhibit-34

UNITED STATES POSTAL SERVICE  
CAPARRA HEIGHTS STATION  
SAN JUAN, PUERTO RICO 00922

Letter of appreciation.

To: Morales, A.D.  
SS# 583-23-1827  
Regular Clerk


This is to express our appreciation for the support and assistance given by you to the Caparra Heights Station daily operations in the Customer Service area. During the past Fiscal Year 1990 and during the Christmas Season.

Due to your interest and concern to our customers and initiative in assuming additional workload we were able to deliver the mail without delay.

Thank you for a job well done.

A copy of this letter will be filed in your official Personnel folder (OPF).

  
Jose E. Sepulveda  
Manager

  
Pedro R. Reyes  
Supt. Postal Oper.

  
Jaime O. Rivera  
Sup. Mails & Del.

Exhibit-35

UNITED STATES POSTAL SERVICE  
CAPARRA HEIGHTS STATION  
SAN JUAN, PUERTO RICO 00922

Letter of appreciation.

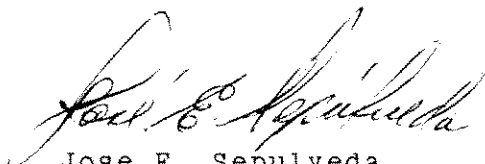
To: Morales A.D.  
SS# 583-23-1827  
Regular Clerk

This is to express our appreciation for the support and assistance given by you to the Caparra Heights Station daily operations, in the Customer Service area. During the past Fiscal Year 1992 and during the Christmas Season.

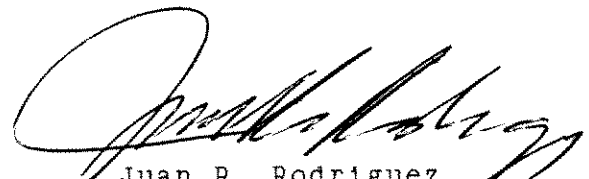
Due to your interest and concern to our customers and initiative in assuming additional workload we were able to deliver the mail without delay.

Thank you for a job well done.

A copy of this letter will be filed in your official Personnel folder (OPF).



Jose E. Sepulveda  
Manager



Juan R. Rodriguez  
Supt. Postal Oper.



Exhibit-34

Position Applied For POSTAL INSPECTORGrade 19

NOTE: Application Must Be Received at Vacancy Office by Closing Date.

Include a discussion of the employee's qualifications in relation to the requirements stated in the vacancy announcement.

## Immediate Supervisor/Manager

I have reviewed the position requirements stated in the vacancy announcement, and: (Check one)



I recommend the employee for the position without reservation. (State reasons below)



I recommend the employee for the position with the reservation(s) described below.



I do NOT recommend the employee for the position at this time for the reason(s) stated below.

Employee Angel David Morales is been under my direct supervision since Nov., 1990.

He had demonstrated his ability to perform efficiently his task with little or no direct supervision. He also have the ability to learn new tasks or assignments with a minimum of training.

He is an employee with a great sence of responsibility and moral.

I recommend him for the position he is applying and for any position that he may qualify.

## NOTE:

As a matter of information please note that there is no evaluation of next higher-level Supervisor/Manager. The reason is because the undersigner is covering the position of Station Manager for more than a year and the position of superintendent is been covered by 204-B's

Due to this situation an objective and fair evaluation can't be made at a lower level supervisor

## Next Higher-Level Supervisor/Manager

I have reviewed the position requirements stated in the vacancy announcement, and: (Check one)



I concur. (Additional comments are optional.)



I do NOT concur. My reason(s) and recommendation are stated below.

Typed Name and Signature of Immediate Supervisor/Manager

PEDRO R. REYES

Typed Name and Signature of Next Higher-Level Supervisor/Manager

Title  
ACTING MANAGER

Title

Office Address  
Caparra Heights  
1505 Franklin D Roosevelt Ave.  
San Juan, Puerto Rico 00920-2607

Office Address

Office Phone (Area Code/FTS and No.)

(809) 782-0075

Date

06/03/92

Office Phone (Area Code/FTS and No.)

Date

If on page 2 the employee has requested a copy of the evaluation, it must be provided after the immediate supervisor and the next higher-level manager have signed this page.

Exhibit-37, Page-1

CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #8 Pg. 1 of 72

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

ANGEL DAVID MORALES  
VALLELLANES

Plaintiff

v.

UNITED STATES POSTAL  
SERVICES, ET AL

Defendants

CASE NO.: 97-2459  
(JAG) (GAG)

ORAL EXAMINATION DEPOSITION TRANSCRIPT

OF

MRS. MAYRA IRENE GARCÍA

Date : Friday, July 2, 2004  
Time : 12:30 p.m.  
Place : OFFICE OF MIGUEL MIRANDA GUTIÉRREZ, ESQ.  
#22 Mayagüez Street  
Hato Rey, Puerto Rico  
Taken by : Miguel E. Miranda Gutiérrez, Esq.  
Notary Public : Miguel E. Miranda Gutiérrez, Esq.

This is the transcript of the proceedings related to the  
taking of deposition of the same and the testimony given.

---

*ADVANCED COMPUTYPE BUSINESS SUPPORT SERVICES*

*#64 Ponce Street*

*Hato Rey, Puerto Rico 00917*

*(787) 758-7029*

Exhibit 37, Page 2

CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #8 Pg. 46 of 72

1 Q I ask you whether you had problems being  
2 off balance at the window.

3 A If I had off balance problems?

4 Q Yes.

5 A No.

6 Q No? You were never... issued a Letter  
7 of Demand because of... being off balance at the  
8 window?

9 A No.

10 Q No?

11 A Not to my recollection.

12 Q No. Your best recollection is no.

13 A Uh-huh.

14 Q Very well. I ask you whether you had  
15 problems with absenteeism and tardiness, Mrs. Mayra Irene.

16 A At some point, because of personal  
17 problems...

18 Q Uh-huh.

19 A ...well, yes, I had some problems with  
20 tardiness. I talked about it with different supervisors  
21 that I had at the time...

22 Q Uh-huh.

23 A ...they spoke with me until, well,  
24 everything was stabilized and...

25 Q Yes.

Exhibit 37, Page 3

CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #8 Pg. 47 of 72

1 A ...well, it came down to my needing some  
2 days during the month because of some appointments I had...

3 Q Yes,

4 A ...and it came down to that.

5 Q And was that tardiness frequent, Mrs.  
6 Irene. Tardiness or absences.

7 A The tardiness, yes.

8 Q Yes?

9 A Yes, I had them at some point... during a  
10 stage at work.

11 Q I ask you whether somehow any of the  
12 supervisors in relation to the tardiness... They were...  
13 Before anything else, was the tardiness reflected at the  
14 time you punched in your card?

15 A What do you mean if it was reflected?

16 Q It was reflected, that is, you would punch  
17 in the card and the time... appeared there...

18 A That's correct.

19 Q ...the arrival time.

20 A That's correct.

21 Q Yes. I ask you whether at any time any of  
22 the supervisors who was there... to whom you reported,  
23 right, as an employee there, whether at some point they  
24 fixed one of your cards because of the tardiness, I'm  
25 asking.

Exhibit 37, Page 4

CERTIFIED TRANSLATION

18-Mar-05 T. #05-906 #8 Pg. 48 of 72

1 A What do you mean fix the card, I don't  
2 understand.

3 Q They somehow tampered with it. They  
4 somehow gave the okay. Somehow they signed the fact that,  
5 for example, the time to enter is eight thirty (8:30) and  
6 you arrived at eight forty-five (8:45), well, somehow,  
7 they worked your card so it would show that you entered at  
8 eight thirty (8:30).

9 A That they fixed my card...

10 Q Yes.

11 A Like I didn't come in at... one...

12 Q That is the question.

13 A ...hour and came in at another...

14 Q Of that nature.

15 A ...no.

16 Q No?

17 A To my best recollection, to me, just like  
18 any employer that made a mistake when punching in...

19 Q Uh-huh.

20 A ...well, the supervisor must enter the  
21 correct date. But that is a daily procedure with anyone  
22 who makes a mistake when punching in.

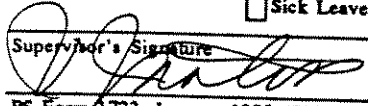
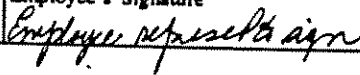
23 Q Okay. I ask you whether somehow the  
24 entries that you made when you arrived late, specifically  
25 any of your supervisors, specially, Enrique López,

U.S. Postal Service

## Assignment Order

\*If temporary assignment includes hours outside of (paid) FLSA workweek, enter FLSA workweek and send copy to FLSA coordinator.

\*\*For qualified LSM/FSM operator who works intermittently on higher level, enter "None."

To: (Name) <b>ANGEL D. MORALES</b>				Position Title <b>FTR WDCLERK</b>			Employee ID <b>583-23-1827</b>			PP <b>Day</b>			PSDS Entry <b>Init.</b>			YR <b>Hours</b>																			
Employee Regular Tour				Off Days			FLSA E/N			Des/Act Code			LDC			Rate Sched.			Level			Pay Loc.													
Begin Tour 05:50				Lunch-Retrn. 12:00			Sun. Mon.			N			11-0			48			PS05			920													
Lunch-Out 11:50				End Work 14:00																															
You Are Assigned and Directed to Perform the Duties as Follows:																																			
Position Title <b>WINDOW DIST CLERK</b>				FLSA Workweek* <b>F S</b>			FLSA E/N <b>N</b>			Des/Act Code <b>11-0</b>			LDC <b>48</b>			Rate Sched.			Level <b>PS05</b>			Pay Loc. <b>004</b>													
Assignment Tour				Off Days			Location (Give exact worksite. If route, give number.) <b>GPO SAN JUAN</b>									Finance No. <b>42-8460</b>																			
Begin Tour 05:50				Lunch-Retrn. 12:00			Sun. Mon.																												
Lunch-Out 11:50				End Work 14:00																															
Beginning of Assignment																		Approximate Ending of Assignment																	
Date <sup>10</sup> <b>02/15/97</b>				Time <b>05:50 AM</b>			Date** <b>05/10/97</b>				Time <b>14:00 AM</b>																								
Reason for Assignment																		Check if Applicable																	
<input type="checkbox"/> Vacancy <input type="checkbox"/> Other (Explain): <input type="checkbox"/> Annual Leave <input type="checkbox"/> Sick Leave																		<input type="checkbox"/> Scheduled Day Off <input checked="" type="checkbox"/> Detail <input checked="" type="checkbox"/> Bargaining Unit Employee Notified by Wednesday of Week Preceding Change (Not Required for clerk craft if detailed to a nonbargaining position.) <input type="checkbox"/> Nonbargaining Employee Given 7 Days Notice																	
Supervisor's Signature 				Date <sup>10</sup> <b>02/14/97</b>			Employee's Signature 				Date <b>02/14/97</b>				<input type="checkbox"/> Continued on Reverse																				

PS Form 1723, January 1995 (Older Editions Not Usable)

Original to Employee  
Copy to Timekeeper

(Fold Line)

## Instructions

- Purpose.** Complete this form to record management-directed assignment changes involving:
  - Temporary assignments to perform duties other than those in employee's official job description, including higher level and training assignments.
  - Scheduled hours and/or days off when schedule change is not posted.
- Frequency.** Prepare a new form for each accounting period.
- Approvals.** Assignments and changes may be approved by immediate supervisor.
- Signatures.** If employee is unable to sign the form, the supervisor should indicate and also identify how the employee was notified in the employee signature space.

PP	PSDS Entry	YR
Day	Init.	Hours
Sat 01		
Sun 02		
Mon 03		
Tue 04		
Wed 05		
Thur 06		
Fri 07		
Sat 08		
Sun 09		
Mon 10		
Tue 11		
Wed 12		
Thur 13		
Fri 14		



Exhibit-39

This case was accepted because, although there are no EEO, grievance or Labor Board resolutions in file (as these complaints are still pending) the claimant submitted clear proof of retaliation by his employer to his OSHA complaints & evidence that a letter of warning was received. He was moved from his duties without explanation & his car was vandalized several times in the Employer's parking lot. He was threatened and the list goes on & on. At the very least I feel a hostile work environment was established. In addition the medical report described the work incidents in detail & gave a rationalized opinion on CR. After reading the whole case file & finding no controversy from the agency, I called Miss Burgos the ICS & she stated the agency did not prepare a controversy.

TJF

9/26/97

Exhibit-40 page-1

TD49 CARIBBEAN CUST SVC DISTRICT  
R0025  
SENIORITY LIST TO POST

REQUESTING INSTALLATION: NPA2  
BIDDING INSTALLATION: NPA2 SAN JUAN POST OFFICE

REQUESTED: 10/06/05 08:01:31  
PRODUCED: 10/06/05 08:01:44

CRAFT	EMPLOYEE NAME	CLERK	EMPLOYER ID	SENIORITY	RANK	FULL TIME/PTR	REMARKS	DES/ACT
361 PADRO	JOSE	A	9701	12/11/93	14			110
362 RIVERA	FELIX	A	2094	12/11/93	17	FSMQ		110
363 ORELLANO	IDARIS	C	0919	12/11/93	16			110
364 BRINDLE	JOHN	D	0714	12/11/93	20			110
365 CRUZ	LYDIA		1755	01/08/94	1			110
366 OTERO	CRISTOBAL		2720	01/08/94	4			110
367 STELLA	GLADYS	L	0295	01/22/94	1			110
368 CABRERA	JOSE	M	0441	01/22/94	2			110
369 SANTIANO	JUAN	V	5239	01/22/94	3			110
370 SAMANIEGO	OMAR		0871	01/22/94	4			110
371 MARTINEZ	HANDEL	I	9648	01/22/94	5	LSMQ		110
372 MEJIA	NORMA		7138	02/19/94	2	FSMQ		110
373 GARCIA	NELSON		7405	02/19/94	7			110
374 SOSTRE	JOSE		7010	04/30/94	1			110
375 MELENDEZ	MERCELA		0443	04/30/94	2	LSMQ		110
376 GARCIA	NANCY		7800	05/14/94	1			110
377 EMERSON	RICARDO		2824	06/25/94	1			110
378 AVILES	ELIEZER	Z	8674	06/25/94	2			110
379 CALSADAR	LUIZ	E	5624	06/25/94	5			110
380 GUINONES	CARMEN	N	7785	07/03/94	1	FSMQ		110
381 LICO	FUBEN		9424	07/23/94	1			110
382 RIVERA	CARMEN		3401	10/01/94	1			110
383 MATOS RIVERA	ORLANDO		6237	10/15/94	1			110
384 RIVERA	LETICIA	M	2384	10/15/94	2			110
385 ORTIZ	CARMEN	O	0335	10/15/94	3	FSMQ		110
386 CORREA	ANGEL		7058	11/12/94	1			110
387 CONCEPCION	NOEL		9494	11/26/94	2	FSMQ		110
388 COLON	BIENVENIDO		8538	11/26/94	4	FSMQ		110
389 VILLAFRAN	MODESTA		0150	11/26/94	5	LSMQ		110
390 RODRIGUEZ	JULIO		1877	11/26/94	9			110
391 RIVERA	RAFAEL	R	6012	11/26/94	10	FSMQ		110
392 MORALES	ANGEL	I	4310	11/26/94	11	LSMQ		110
393 MALDONADO	SANDRA	T	8969	11/26/94	12			110
394 PADILLA	MARY		2614	12/10/94	1			110
395 SALGADO	WILSON		6039	12/24/94	1			110
396 CABEZA	ADRIAN		0061	01/21/95	1			110
397 REYES	MAGALY		5599	03/04/95	4	FSMQ		110
398 DE ROYOS	ROBERTO		8483	04/15/95	1			110
399 RIVERA	ROBERT		3016	04/17/95	1			110
400 RABELL	JOSE	L	7649	05/27/95	2			110
401 RAMOS	CARMEN	M	7753	06/10/95	1			110
402 LOPEZ	ANTONIO	N	1427	06/24/95	1			110
403 LEBRON-KALAT	CARMEN	J	9939	06/24/95	4			110
404 MARTINEZ	PEDRO	A	1339	06/25/95	1			110
405 MUNIZ	MARIA	L	3825	07/08/95	1			110

Antonio  
Lopez

FROM :

FAX NO. :

Nov. 14 2005 08:15AM

Exhibit-40, Page-2

043 CARIBBEAN COST SVC DISTRICT  
0025 SENIORITY LIST TO POSTROMAN RESOURCES INFORMATION SYSTEM  
SENIORITY ROSTER  
REQUESTING INSTALLATION: N843 ALL  
BIDDING INSTALLATION: N842 SAN JUAN POST OFFICEPAGE: 15  
REQUESTED: 10/06/05 08:01:31  
PRODUCED: 10/06/05 08:01:44

BAFF	EMPLOYEE NAME	CLERK	EMPLOYEE ID	SENIORITY	RANK	FULL TIME/PTR	REMARKS	ESS/ACT
181 ALVAREZ	ANALIZ		1223	03/12/88	3			110
182 SANTOS	LUTIS	F	9580	03/12/88	4			110
183 BELTRAN	FLORANTINO		0153	04/09/88	1			110
184 NIETZSCH	JORGE	J	6932	04/23/88	1			110
185 CEDENO	ROSA		4158	04/23/88	2		FSMQ	110
186 ROSARIO	YANIRA	I	2416	04/23/88	7			110
187 SANTIAGO	ENID		1804	05/07/88	1		LSMQ	110
188 RIOS	DAVIS		9231	05/07/88	2		LSMQ	110
189 COLON	ORLANDO		3099	05/07/88	6		LSMQ	110
190 VARGAS	JORGE	A	1021	05/07/88	7		LSMQ	110
191 SANCHEZ	CARLOS		9432	05/07/88	8			110
192 SANTOS	DANIEL		7927	05/07/88	11			110
193 MORALES	OSCAR		5123	05/07/88	12			110
194 ROMERO	NANCY	M	0974	05/21/88	1			110
195 BURGOS	FRANCISCO		8677	06/04/88	3		FSMQ	110
196 SANCOS	WILLIAM		5814	06/18/88	2			110
197 RIOS	RICHARDO		3090	07/02/88	3			110
198 COLON	JESUS		2804	07/02/88	4			110
199 HERNANDEZ	JUAN	A	0570	07/02/88	6		FSMQ	110
200 MEDINA	ALFREDO	E	7618	07/02/88	8		FSMQ	110
201 ROSADO	ANGEL	D	3556	07/02/88	11		FSMQ	110
202 MORALES	CIBELA	N	1327	07/02/88	12		FSMQ	110
203 DEL HOYO	ANTONIO		0951	07/02/88	13			110
204 DIAZ	HECTOR	L	0762	07/30/88	1			110
205 GARCIA	EDWIN	L	0220	07/30/88	5			110
206 CASTRO	JUAN	H	4581	07/30/88	6		FSMQ	110
207 PACHECO	EFRAIN	L	1854	07/30/88	9			110
208 CRUZ	MANUEL		9715	07/30/88	14			110
209 ROBLES	VICTOR	D	2154	07/30/88	15			110
210 NAVARRO	JUAN	R	2325	07/30/88	22			110
211 AYALA	MIGUEL	A	0903	07/30/88	25			110
212 TORRES	MIGUEL		5144	07/30/88	30			110
213 RODRIGUEZ	SANTIAGO		6911	07/30/88	35			110
214 SOTO	CARLOS	A	2255	07/30/88	37			110
215 PENA	ALIDA		8036	08/13/88	1		FSMQ	110
216 RIVERA	VICTOR	I	0187	08/13/88	5		LSMQ	110
217 MARTINEZ	SANTOS	M	0480	08/13/88	7		LSMQ	110
218 FELIX	JUAN	H	2625	08/27/88	1			110
219 LAYNE	MILFREDO	H	7578	08/27/88	2		LSMQ	110
220 RIVERA	ANGEL	M	8155	08/27/88	5			110
221 MATEO	MARTA	I	4163	09/24/88	1		LSMQ	110
222 RODRIGUEZ	THOMAS	H	7079	09/24/88	3		LSMQ	110
223 FADILLA	HEREDITH	I	9251	09/24/88	5		LSMQ	110
224 REYES	FRANCISCO	H	5880	09/24/88	6			110
225 DIAZ			9573	10/08/88	1		FSMQ	110